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Report on the

MEDICAL EXAMINATION
pursuant to Rule 135 of the Rules of Procedure and Evidence

in the case of

Mr. AL HASSAN Ag
Abdoul Aziz Ag Mohamed Ag Mahmoud

(case number ICC-01/12-01/1)

8th December 2020
Authors: Michael Korzinski, Gillian Mezey, & Roland Weierstall-Pust

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SUMMARY

Background. The Chamber appointed a panel of experts (**POE**), with a range of expertise, consisting of Dr. Michael Korzinski (**MK**), Prof. Gillian Clare Mezey (**GM**), and Prof. Roland Weierstall-Pust (**RWP**). The POE was instructed to undertake a medical (1) examination of the accused Mr. AL HASSAN Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (**AH**) and assess whether the accused suffers from any condition which might have an effect on his ability to follow and take part in the ongoing trial proceedings.

Methods. The POE conducted the assessment remotely (GM) and face-to-face (MK & RWP). The POE used structured and semi-structured interview techniques as well as behavioural associations. Based on the files that have been disclosed to the POE, a particular focus was on trauma-associated symptoms related to alleged torture, and their impact on AH's fitness to plead and ability to exercise his fair trial rights. The POE has considered other experts' opinions

Results. AH exhibits some sub clinical stress symptoms, including headaches and intermittent sleep disturbance. He was affected by ruminations and strong feelings of betrayal and degradation. His self-report was consistent with the clinical picture and his self-reported cultural background and biographical upbringing, which prompted us to consider betrayal trauma as well as posttraumatic stress disorder. In addition, AH reported negative effects of the Covid-19 restrictions on his well-being. From an intellectual perspective, AH confirmed that he is able to follow and take part in the ongoing trial proceedings. However, on the assumption that AH was a victim of torture, significant obstacles were identified that could impair AH's ability to give evidence in his own defence and exercise his fair trial rights. These also include potential trauma triggers, such as being handcuffed or facing the Prosecutor in Court.

Conclusion. The POE could not identify any condition that would affect AH's intellectual and cognitive capacity to follow and take part in the ongoing proceedings. He is fit to plead according to the strict of criteria adopted in this report and to exercise his fair trial rights. However, the POE have identified areas of concern that place AH at risk and should be taken into account during the proceedings. Failure to do so in the opinion of the POE could:

A) Impair his capacity to exercise his fair trial rights, and
B) Cause suffering and significant damage to his mental health over the course of the Court Proceedings and beyond.

The POE's evaluation of his current clinical picture is inconclusive: Whereas GM sees no sign of any mental disorder, MK and RWP find AH's current clinical state consistent with a subclinical manifestation of a complex trauma-disorder taking into account his cultural and biographical (individual) background. The final conclusions are limited by a lack of available information disclosed to the POE and by the inability independently to verify the alleged torture.

The report must be read thoroughly and in its entirety as the matters it addresses are complex. Fitness to plead is a dynamic process, not a fixed point. The panel is happy to respond to any questions that the Chamber may have and assist in an advisory capacity if it would assist the court.

1. PANEL OF EXPERTS AND QUALIFICATIONS

1. The Chamber appointed a panel (referred to as the "Panel of Experts" (POE) in this report) consisting of Dr. Michael Korzinski (MK), Prof. Gillian Clare Mezey (GM), and Prof. Roland Weierstall-Pust (RWP), to undertake a medical examination (specifically outlined in the following paragraph 2) (see also p. 15, ICC-01/12-01/18-1006-Conf 21-08-2020 15/15 EK T) of the accused Mr. AL HASSAN Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (AH).

2. The POE was instructed "to submit a report, jointly to the extent possible and as considered appropriate" (see also p.15, ICC-01/12-01/18-1006-Conf 21-08-2020 15/15 EK T).

3. The POE have jointly planned and conducted the assessment of AH and have jointly written this report, which reflects the professional expert opinion of the three experts involved, unless otherwise specified.

4. Since the chamber selected a panel with different professional backgrounds and methodological approaches, the POE spent considerable time on discussing their different perspectives, viewpoints, and interpretations, which is reflected by the broad scope of the present report. Whenever possible, the POE aimed to achieve agreements on the various points that have to be considered through discussion. The Panel met on ten separate remote calls to discuss: the methodology; the structure and format of the report; to discuss and edit various drafts of the report through various iterations and then to agree the final version, as submitted. If the POE found it necessary to provide different perspectives on the interpretation of certain issues that occurred during the professional discussions of the case, these different perspectives are outlined.

5. The experts' CVs are made available in Appendix 1.

2. NATURE OF INSTRUCTIONS

6. The Chamber instructed the POE to provide its observations on the following issues:

   - Whether the accused suffers from any condition which might have an effect on his ability to follow and take part in the ongoing trial proceedings, notably the following of evidence on a daily basis, as well as more generally on the capacities which are necessary for the meaningful exercise of his procedural rights.
   - What measures/adjustments, if any, are recommended to address any issue above for the purpose of ongoing trial proceedings and/or for ongoing detention. (ICC-01/12-01/18-1006-Conf 21-08-2020 13/15 EK T, p. 13. 37th para). This includes any medical issues which could affect Mr Al Hassan's ongoing fitness to stand trial or practical arrangements, such as Mr Al Hassan's attendance and participation at trial.

7. The POE received further advice that fitness to stand trial "does not concern, in and of itself, whether the accused has particular medical conditions, but relates to whether the accused is able to exercise effectively his fair trial rights in the proceedings" (E-Mail [redacted] on behalf of the presiding judge; Date 30th. October 2020)

8. The POE faced a variation in the original instructions, altering"(identify) any condition which might have an effect on his ability to follow and take part in the ongoing trial proceedings (ICC-01/12-01/18-1006-Conf 21-08-2020 13/15 EK T, p. 13. 37th para)", to "identify any medical issues (POE's contracts), to "fitness to stand trial does not concern, in and of itself, whether the accused has particular medical conditions" (see point 9).

9. The instructions to the POE were subsequently varied, to read as above.

10. The POE was informed that it is the exclusive responsibility of the Chamber to satisfy itself that the accused is not unfit to stand trial. The Chamber, in its decision of 13 July 2020, found that based on available information AH was not unfit to stand trial.

11. The conclusions of the POE on Mr. Al Hassan's fitness to plead and his ability to exercise his fair trial rights refer to medical findings rather than matters of fact, which are for the Chamber to determine.

12. The POE has relied on guidelines and scientific references from the international forensic expert community in order to properly fulfill their professional duties in the evaluation of the accused's mental health and his ongoing fitness to stand trial from a mental health perspective.

13. Details on the methodological approach for the assessment of AH and the structure of the present report based on the above quoted instructions to the POE are outlined later in the report.

3. SOURCES OF INFORMATION

3.1 Interviews with AH.

14. The interviews (remote and in person) were preceded by an introduction when GM explained the nature, purpose and scope of the interview, who had directed it, how the report would be distributed and the limits of confidentiality.

15. The interviews (remote and in person) were preceded by an introduction when GM explained the nature, purpose and scope of the interview, who had directed it, how the report would be distributed and the limits of confidentiality.

3.1.1 Remote-Assessment by GM

16. **Dates:** 9th November 2020 – two and a half hours (including one twenty minute break for prayers).

10th November 2020 – two and a half hours (including one twenty minute break for prayers).

17. **Setting:** The interviews were conducted via interpreters located in the Chamber. AH chose not to be able to have video link, so the interviews were conducted using audio only.

18. **Content:** The interviews (remote and in person) were preceded by an introduction when a member of the panel explained the nature, purpose and scope of the interview, who had directed it, how the report would be distributed and the limits of confidentiality. The focus of these assessments was to

- conduct a full and thorough mental state examination and explore any psychiatric symptoms displayed by AH currently and in the past
- to discuss his experience of detention; and his experience in the court; to identify areas of vulnerability and coping strategies
- to explore his perceptions of psychiatric and medical assessments to date
- to assess whether AH is experiencing any posttraumatic psychiatric pathology attributable to alleged torture
- to assess whether AH is fit to plead and to exercise fair trial rights, according to established criteria.

3.1.2 Face-to-face assessment by MK and RWP

19. **Dates**: 11th November 2020 – two hours and forty-five minutes (including thirty minutes break for prayers); 12th November 2020 – seven hours and forty-five minutes (including two hours for breaks

for prayers and lunch); 13th November 2020 – eight hours and fifteen minutes (including two and a half hours for breaks for prayers and lunch)

20. **Setting:** The interviews were conducted in a conference room at the International Criminal Court (ICC, The Hague, Netherlands) with the help of two teams of interpreters (each of two interpreters). To ensure confidentiality, guards were not present during the interviews, but had been placed outside the room with the ability to watch the interviews taking place. Due to the Covid-19 regulations, AH was placed behind a Plexiglass screen. MK and RWP discussed the set-up and seating arrangement with AH, who reported that he was comfortable with it.

21. **Content:** The first of the three days was concerned with the introduction of the purpose and scope of the interviews, the instructions the interviewers had received, and potential limitations of confidentiality related to the specific purpose of the interviews.

22. Mr. Al Hassan agreed that RWP and MK would take written notes during the assessment and quote from the interviews in the present report.

23. AH reported that he had informed his lawyer about the nature and purpose of the interview. He confirmed that he had chosen freely to speak to MK and RWP. "I wanted to see the experts and hear their voices". He was also informed that two psychologists would come. On the third day, he stated "I really appreciated it (the interviews) and benefitted […] I have explained my situation, the problems I face, and my perspective on the case. […] It was good to meet you in person and to read the other's minds".

24. However, on the second day, when AH was asked about his understanding of voluntary participation in the interview, he said "I cannot stop it, I have no choice"/"I have no requests, it's all up to you"). He had learned from his father when he was very young, "Don't make the doctor and the judges angry" (meaning any doctor or judge whom he encountered). When the interviewers addressed AH's concern that they could belong to "the system", and his deep sense of a loss of control, he said, "You decide. Whatever you will write I have to take it / if I were forced to attend the court sessions, I would have to take it". He repeatedly brought up the issue of confidentiality during the interview. This report will deal with the issue of a feeling of betrayal and injustice in more detail elsewhere.

25. The second day was concerned with AH's fitness to plead and his ability to exercise his fair trial rights. This included AH's understanding of the case, his understanding of justice, including from a transcultural and individual / biographic perspective, his position in the case, and the actions he took to adapt to the specific setting, as well as the alleged potential trial-related trauma triggers. In addition, potential mental health effects related to his imprisonment, the alleged torture, and the court proceedings were explored, as well as their reciprocal relation with his fitness to plead and his ability to exercise his fair trial rights.

26. The third day served to clarify central points from the previous day and a more in-depth analysis of trauma-related mental health issues as the basis of recommendations for measures to optimize AH's mental health.

27. Standardized psychological measures were applied on days two and three. All measures were assessed by means of semi-structured interviews, aiming to ensure a proper understanding of the questions by putting them into his own biographic and cultural context and prompting his responses prior to rating.

3.2 Collateral Information

28. A list on all files disclosed to the POE can be found in Appendix 2.

4. METHODOLOGY

4.1 Differences in the approaches to assessment by the Panel of Experts

29. Due to Covid-19 restrictions, the POE was asked to perform the assessments remotely. Informed by their different approaches and professional backgrounds, GM assessed Mr Al Hassan via a telephone link, whereas MK and RWP met face to face with Mr Al Hassan.

30. The POE also chose these different approaches in order to evaluate the consistency between the information gathered by GM and MK/RWP, since recommendations for measures to ensure AH's mental health would have to take Covid-19 restrictions into account.

31. The different approaches taken during our assessment reflect the different professional backgrounds, expertise and experience of the panel members: GM is a psychiatrist and a medical practitioner; RW and MK are psychologists.

32. The interview material contained in this report has been assembled through a combination of open and closed questions and clinical observations.

33. The interviews were informed by our experience of many years of work in the field of psychological trauma and by psycho-analytical principles. These emphasize the importance of using neutral, non threatening and open questions and of establishing rapport and trust, particularly with individuals who have been traumatised. Rapport is central to the task of obtaining accurate information, especially in relation to emotionally painful subjects, in situations where the individuals may have previously experienced a betrayal of trust, or have a vested interest in the outcome of the assessment. (Garland, 2018). The interviewer simultaneously observes the manner and behavior (visual, verbal and non-verbal) and look for indicators of congruence or inconsistency between what the individual says and how they say it and how they behave.

34. During the first phase of the interview we encouraged AH to speak openly and freely, with as little interruption as possible, about the problems he has been experiencing. In the second day we "drilled down" into the areas he had highlighted himself as being of concern. We adopted a rigorous and critical approach to questioning AH, whilst at the same time taking care to avoid our questioning feeling like an interrogation. We recognize that it is important not simply to accept an individual's account of events as true, but to seek detail that substantiate or alternatively undermine what they say. Having said this, we expect some inconsistency between accounts given in individuals who have been traumatized, because of memory gaps which are a common feature of psychological trauma.

4.2 Measures to prevent re-traumatization during the POE's assessments

4.2.1 Definition of re-traumatization

35. Re-traumatization can be defined as the triggering of symptomology in response to exposure to new traumatic material reminiscent of initial traumatic events (Carello & Butler, 2014). Thus, taking into account the suggested diagnosis of Posttraumatic Stress Disorder (PTSD, see report Catherine Porterfield MLI-D28-0003-1801) and that the assessments of the POE should not cause harm to AH, the POE took take action to prevent re-traumatization of the accused (for more details see also scientific literature on Trauma Informed Care, e.g. Piotrowski, 2020).

4.2.2 Potential trauma-related triggers related to alleged torture in the present case

36. Acknowledging the alleged torture of AH (Catherine Porterfield and Juliet Cohen MLI-D28-0003-1801, MLI-D28-0002-0500), the POE endeavored to avoid general torture reminders as well as reminders that are specific to AH's case.

37. Torture in general uses mechanisms such as taking away the individual's sense of control, dignity, or individualism (ref. Weierstall, Maercker, & Elbert, 2011). General measures have to be taken to treat a torture survivor in a way that is different to the initial and potentially traumatizing torture setting, in order to prevent the individual from re-experiencing a pattern of adverse past trauma cues in the here and now (→ re-enactment; for further information, for example see Levy, 1998). This includes the following triggers: physical (e.g. sitting in an uncomfortable position as during the time when the torture happened), emotional (e.g. feeling dehumanized), cognitive (e.g. having thoughts about the current situation that resemble the thoughts an individual had during the torture session), situational (e.g. facing the same seating arrangement in a room), or relational (e.g. being reminded of the torturer by the way the interviewer acts, speaks, or treats the individual).

38. In the case of AH, the POE acknowledged potential trauma reminders in relation to the alleged torture that were outlined in the available documents (see section 3.2 on collateral information). These included the experience of being interrogated by being asked the same questions over and over again, not being allowed to refuse to answer, not having breaks during an interview, feeling disrespected as a human being (also in relation to disrespecting his Islamic religion), wearing masks, not knowing the individuals who were interviewing him and their roles, not knowing what was going to happen in a situation, being refused drink, etc. (see Porterfield report for further details; MLI-D28-0003-1806, MLI-D28-0003-1809 MLI-D28-0003-1811 MLI-D28-0003-1801).

4.2.3 Measures to Establish Rapport and Prevent re-traumatization during the assessments

39. The POE took several measures to establish a rapport with AH and to prevent re-traumatization and re-enactment (reenactments occur inadvertently and result from the psychological vulnerabilities and defensive strategies characteristic of trauma survivors) during the assessments. For example, general instructions about the assessment procedure were sent to AH through the registry even before the start of any personal contact, to explain that his participation was voluntary, All the experts took considerable time to explain their role and the purpose of the interview, allowing AH to decide which questions he would agree to answer. During the interviews, AH was free to requests breaks to drink water or pray. The remote sessions were conducted without video transmission in line with AH's request. The Plexiglass screen in the ICC conference room for example allowed for removing masks after everyone was seated. AH was also offered the opportunity to change the seating arrangement of MK and RWP to whatever he found most comfortable.

40. In terms of re-enactment, AH re-enacted torture-associated scenic patterns on various occasions. This issue and its relation to psychopathology and potential adverse effects on AH's fitness to plead and his ability to exercise his fair trial rights will be outlined in more detailed in the present report (paragraphs 8ff.). In relation to the issue of confidentiality for example, MK and RWP took every effort to avoid this being mixed up with the alleged interrogation structure, for example by encouraging AH to decline to talk about distressing memories. However, AH exhibited passivity (learned helplessness) in relation to asserting this right ("I'm a prisoner and I have no choices"; "I will have to take whatever you write"). On two occasions, MK and RWP intervened and stopped the recollection of past memories, when AH started talking about experiences of torture, while lose contact to the here and now and the specific interview setting.

41. AH's first communication with MK and RWP - in light of the above - was significant. "As doctor psychologists it is important to accept the invitation to come and understand the other side of my life. I am very grateful. I am living in an inhuman situation I feel completely isolated from the world. I don't see my family. I consider myself as a victim and that I am held here illegally. I meet people, I don't know who they are or what they are looking for from me. I meet you as doctors. I know you are not responsible for what has happened to me. But I would like for you as psychological doctors to not judge me from my past but to judge me as a person… you cannot feel or understand how I am suffering. I want to thank you very much for looking into account my case."

42. AH spontaneously spoke to MK and RWP about his experience with ICC prosecutors in Mali. He believed that the team of prosecutors that came to visit him from The Hague were more interested in the reports that had been previously prepared by the French and Malian authorities than his actual experience.

43. AH's initial statement to MK and RWP appears to reflect a deeply rooted fear that the ICC prosecutors were not in fact 'independent' and the interview would be a repetition of what happened to him Mali. MK and RWP would appear "friendly and kind", as he initially believed the ICC prosecutors to be, but he would later realize that they were not interested in his "real " story. AH stated, "I understood from the questions that they were asking that they (prosecutors) were only interested in the statement that had been taken from me first by the French and the Malian authorities. If I do not stick to the story I was given (torture) it was very very bad for me when I went back to my cell. I tried to raise it with the prosecutor but it was impossible. It was a big frustration - going back to torture [redacted] was too much for me. To talk about it (what happened) only made it worse because they took like it I was not cooperating. It was pointless. I lost trust and confidence that people were who they said they were… or …what exactly was their real motivations towards me. I did not understand I was the subject of their investigation… My lawyer was Tunisian. He did nothing. I am sure that even what I tried to say was interpreted correctly. It was like he was working for the prosecutor."

44. "They (prosecutor) asked me general questions…. But I could never tell them that all of what was written down about me was what the Malians told me to say".

45. "I had a great hope that ICC would be interested in my side of the story but it was not the case. The French report, the Malian Report, the report made by the prosecutor and the report that was made when I arrived in Hague are all connected. No one cares about my real story. I felt that they kept on pushing me to accept what is in the report".

46. "During the torture they say, 'you must say this… you must keep this. Don't change the story. We can make it much worse for you." We do not believe his remark was directed at the ICC but rather the Malian authorities in the detention facility.

47. AH continued, "I do not want to go into the details or provide further information about what happened in Mali. It can be very damaging to me. I'm very scared. You do not know what I am confronted with and there is not enough time to talk about it."

48. It is unclear whether or not the danger and fear that AH was referring to relates only to the proceedings in The Hague or in fact reflects wider concerns. [redacted] These questions could not be explored, owing to the shortness of time, but they could have a profound impact on his ability to exercise his fair trial rights.

49. When asked what he was able to tell about his experience during his interview with GM. He stated, " Yes I met her, she was very polite, she asked many questions, about how I felt, what diseases I suffered from and other questions that related to the trial. She tried to go into psychological areas with me. I did not want to go that way with her. I did not feel comfortable. Maybe she does not understand my situation very well. I was worried. Afterwards I think (thought) to myself that I did not respond fully or very well to her questions. I was not satisfied with meeting."

50. AH spoke openly and spontaneously about the ways he has learned to function since his arrival in The Hague. However, he also expressed fears that information disclosed to MK and RWP about the coping strategies that he has developed to manage the more distressing aspects of his experience, if disclosed, would be used "against" him.

51. RWP and MK made every effort to ensure that AH remained orientated in the here and now and to reassure him that it was not the aim of the panel to cause him further distress. RWP and MK made it clear to AH they would not be asking him to recount his torture history.

52. AH stated, "To be true I could not repeat the same story again. To speak about it causes me great pain."

53. RWP and MK asked AH if someone had gone through the Porterfield report with him or other reports that address his allegation of torture and ill-treatment.

54. AH stated that he will leave it to his defense team to go through the reports. When MK and RWP enquired whether he did not want to make sure that it accurately reflected his experience, he said," The one doctor wanted to have the details from me but I do not want to read it because I am afraid that it will all come back to me again. I do not want re-live the experience. I trust the report. I put all my effort into it. My defense has asked me to do that (read it) but I cannot. I do not want to fall back. I want to block it out. I cannot watch the television if it shows someone suffering or being tortured. I do not want to remember."

4.3 Limitations and Impediments to the Assessment Process

55. On the first day of AH's meeting with GM, a guard remained in the Chamber with him throughout the interview. AH told MK and RW that he had been distressed by the guard's presence, even though he had liked the guard concerned. As the session was not videoed, Professor Mezey was not aware of the presence of the guard at the time.

56. On day 2 of GMs assessment, the guard was removed from the Chamber during the interview, at the request of his lawyer.

57. We are aware that AH has made numerous references in previous statements, to Malian guards coming into the room during the prosecutor's interviews with him in Bamoko in what he thought was a clear "reminder" of what would happen to him if he changed his story. In light of this, it was unfortunate that a guard had remained in the room with him during part of his assessment with GM.

58. The POE considered whether the presence of the guard during the first day of the interview had impacted on Mr Al Hassan's willingness to engage in the interview, or the quality of the assessment. On balance we felt that it had not. Mr Al Hassan himself did tell GM about the guard and gave no indication of being distressed or inhibited by the guard's presence at the time. GM did not observe any significant difference in Mr Al Hassan's manner or behavior on day one and day two of her assessment. AH was somewhat wary about the situation and was reluctant to talk to GM about either the alleged crimes, or his experience of torture on both days. However, as the interviews continued and AH be-

came more familiar with the process and with GMs questioning, he seemed to relax somewhat and became more open in his responses. AH told GM that, when he was brought to speak with her on day one, the guard had not explained to him where he was going and this had made him more anxious. However, on day two, he was told where he was going and , moreover, was less anxious about the process, having already spoken with GM[1].

59. Non provision of AH's clinical and custody records during his detention. These were requested but access to them was declined by AH following advice from his defense team. These would have assisted us in providing detail about AH's psychological and social functioning in the detention center, allowing us to corroborate his account; to assess any objective evidence of psychiatric disorder / extreme distress or impairment (Including since the start of the trial); and to 'triangulate' the information provided by AH. We understand that the defense psychologist did have access to this material, so it is unfortunate that we as appointed experts to the Chamber were denied the same.

60. Non provision of other allegedly relevant sources. From the report of Professor Ludes we understand that even media files were disclosed to other experts.

61. The various experts instructed in the case seem to have had access to different types of documentation, which added to the difficulty in evaluating the evidence, including the medical reports.

62. Non provision of details of the alleged torture was also an impediment. An evaluation of AH's ability to stand trial without damage to his mental health requires the POE to assess the risk of re-traumatization during the court proceedings.

63. Non provision of details as to the charges faced by AH. An important aspect of a fitness to plead assessment would have been to question AH about the alleged crimes, in order to observe his ability to deal with challenging questions and his response to them e.g. does he dissociate / become excessively distressed when being probed? What is his perception of and attitude towards the crimes he has been charged with? Without knowing all the details of the alleged crimes, we were hindered in our ability to test out these responses. As the trial had already commenced, however, we were able to question AH as to how he has coped with the experience so far, to assess whether there has been evidence of psychiatric / psychological disturbance or deterioration during and in between hearings, and to identify what may be particular areas of vulnerability.

64. During our visits to The Hague, MK and RWP asked for access to the Court during a hearing in order to be able to observe AH's behaviour and demeanour. This was unfortunately denied. A request was also made by MK and RW for permission to be given to tape record their interviews with AH. This was also denied.

65. MK and RWP are not French speakers. Various documents provided to the POE in the folder "*medical materials/C. Prosecution Experts"* were only available in French. MK and RWP made a request to the CMS but only conference calls with interpreters were offered to MK and RWP, which were held. Verbatim translations of selected paragraphs, however, were requested by RWP and MK but were not provided.

[1] The POE noted that AH gave no indication at the time that he was experiencing any distress during the assessment. One must consider Mr. Al-Hassan's fear of "displeasing" the guards or doctors as to why he did raise the issue directly at the time. It is difficult to interpret his behavior but raises questions about how he communicates his distress in the presence of authority figures.

5. BACKGROUND

66. The following section highlights the most significant self-reported cultural and biographical imprints in the life of AH, which are likely to have impacted on his current mental health status and his perception of the case. The information provided in this section relies on Mr. Al Hassan's self-report.

5.1 Relevant Family and Personal History of Mental Disorders

67. AH confirmed that on a superficial level he is aware of western psychological concepts. [redacted] This has to be taken into account when AH's responses and self-assessments are evaluated with regard to the presence or absence of mental health problems in someone with his background (see various scientific reference on the impact of religion and culture on trauma and mental health consequences, e.g. Im et al., 2017; Athar, 1993).

68. AH said that he had never experienced any mental health problems or had any mental health treatment prior to his arrest. [redacted]

69. As a child and adolescent, AH witnessed conflict-related violence, experienced persecution because of his cultural / ethnic background, spent time in a refugee camp, resettled in third country and then had to flee that country when the situation of the Tuareg people was no longer tenable. Details of these experiences will be cited in later sections of this report.

70. "Adverse Childhood Experiences" (ACEs; see original work by Dr. Vincent Felitti (e.g. Anda et al., 2006), as well as numerous scientific publications on the impact of adverse childhood experiences on (mental) health) are 'highly stressful, and potentially traumatic situations that occur during childhood and/or adolescence. 'Such events may be single or multiple events over time, that threaten or breach 'the young person's safety, security, trust or bodily integrity. These experiences directly affect the young person and their environment, and require significant social, emotional, neurobiological, psychological, relational or behavioural adaptation.' This is raised here as AH went to great lengths to explain what he experienced, characteristic of ACE and relevant to him as they shaped his sense of justice, protection and betrayal.

71. AH denied any history of mental health problems prior to his arrest. He said that, whilst he had been held in the state prison, and particularly when he had been tortured, he had been in "constant fear". The fear only stopped when he arrived in The Hague. However, he reported that his initial relief was short lived when he began to fully comprehend what were the charges he was facing and that statements taken from him in Mali were being relied on.

5.2 Culturally rooted sense of betrayal and degradation

72. AH recounted at length the history of the Tuareg tribe. He clearly felt that one could not understand his real story unless his history was also understood.

73. AH reported that Mali was a West African French colony. The Tuareg are a Berber tribe that come from North Africa. Before the independence of Mali the French promised the Tuareg an independent

state in the Azward province in the North of Mali. When the French left Mali in 1960 the Malian authority from the south began to oppress the Tuareg community..

74. He also gave a detailed report of the forced migration that the Tuareg have experienced and of their having to flee from towns and cities to the suburbs and rural areas.

75. “People have had to eat their shoes because there was nothing for them left to eat”. Many Tuareg were killed according to his reports: “In Timbuktu, the city, only three families remained”.

76. In 1991 the civil war began in Mali and the armed conflict escalated with the Malian authorities on the one side and other ethnic groups (Songhai and Arabs from the north) on the other side. AH reported, “I witness many terrible things during that time.”

77. [redacted]

78. AH said that when the Tuareg sought help from other countries, no one except Libya and Ghaddafi stood by their side. Although they had some rights in Libya, for example the right to study, Libyan nationality would not have been granted to them. AH further claimed that none of the aid organizations would work with the Tuareg and that thousands of internally displaced people were not counted as victims, unless shrines were destroyed….. “we are not considered as victims only as perpetrators.”

79. AH told us that the real injustice was that the Tuareg were oppressed for wanting independence. He said that the Tuareg were very powerful in the areas they controlled but that they were only trying to protect their land “long before Islam we defended our lands”. [redacted]. He further stated that “it is easy to call someone a terrorist. […] I could also accuse anyone of being a terrorist […]. [redacted]
“When there is colonization, moderate people will work with the hardliners and stand together. […] France imposed their policy and […] when things change, all is called terrorists”. According to AH, in the people and in the government there are some “rotten apples”. However, “their size is little”, even if the effect of their acts can be huge.

80. AH told us that “your enemy will not try to understand you and your culture and domestic fights and rivalries. […] Instead they will give cars and money to one tribe, trying to split the tribes. […] This is the malicious policy of the occupiers. […] They could have helped us with reconciliation; this is something you would do as a positive actor.”.

81. [redacted]

82. AH further complained that that the Sharia of the Muslim Tuareq was, “treated as a crime against humanity.” AH continually to raise issues regarding the relationship between Islamic and international law both in terms of the inequality and lack of understanding between the two He said, “I had no

idea that's the case" (Sharia as he understood it was violation of international human rights law). He said, "we became easy targets after 2015, because we are of no particular economic or political interest to western countries. But western countries wouldn't sanction the actions taken against the Tuareq in other countries such as Saudi Arabia where Sharia is also practiced because to do so would have a significant geopolitical impact."

83. It was confirmation in his mind that international human rights law is not applied equally around the world. He said, "They say it is all for all but it is not for all. All of what I am learning about International Human Rights Law here since I have arrived in The Hague. I want to believe in it but much - not everything - has made it difficult to believe in."

84. Taken together, according to AH's self report, he has developed a deep sense of being betrayed, humiliated, and of not being accepted as a human being of equal worth by people, tribes, institutions and governments more powerful than him. His sense of self is deeply intertwined with the Tuareg people. Although he spoke about himself it was always in the context of his being a member of his tribe and culture. He reports that these long standing and established patterns, with roots in the Islamic and Tuareg cultures , were re-enacted repeatedly during the torture experiences he has reported.

85. Betrayal trauma theory (Freyd, 1996), founded in attachment theory, "proposes that trauma that is perpetrated by a trusted or depended upon other (i.e., a high betrayal trauma) is more psychologically damaging than trauma perpetrated by a non-close other, or non-interpersonal traumas. The concurrent states of dependence and abuse are at odds with one another, creating a conflict for the victim between the need to stay engaged in a relationship and the need to defend oneself." Although initially developed in relation to childhood abuse and dissociation the principle has explanatory power and relevance in situations where an individual experiences repeated acts of betrayal.

5.3 AH's prior understanding and experience with international law

86. AH reported that he had learned about international law in the media. Before personally encountering international law, he had the expectation that every human being would be protected by international law and human rights.

87. He also reported that he told the Prosecutor about his torture and that he had expected help from him. According to his understanding, someone from a western justice system that represents international human rights should have been interested in human rights violations, holding the torturers accountable. "What I expected from OEP didn't match the reality". He has always thought that Europe represents human rights. His experience was that "the French only speak for the people of France" but that "everyone has to respect rules and laws and cannot do whatever they want". He also stated "I feel betrayed by the law". "The French are the prosecutor and the judge […] you cannot judge and prosecute a person. […] But what can I do against it?!" "The so-called international law is a misunderstanding of international law / I do not feel protected by international human rights / I experienced the opposite of human rights". And "no one is held accountable for what they have done to us".

88. AH explained that in his culture they had civil and religious judges. Both have their competences. In his experience, civil judges would take money whereas the religious judges would not. If someone from his tribe had a problem with someone from another tribe, they would go to the Sharia judge from a third tribe that would judge the case fairly in accordance with Islam. Because the civil judges would accept money, a wealthy person could pay the judge, which would affect his verdict. AH feels as if the judges in the present case would not understand the Tuareg and the cultural meaning of the Sharia.

89. According to AH, he grew up with the Sharia well accepted by Muslims. “I thought that all Muslims like Sharia”. “I did not know that the Sharia and the Koran were a crime […] because also Muslim countries ratified the ICC”. “If the people would understand that Sharia is a crime, they would change”. “I think that it is compatible to be a good Muslim and to stick to ethical principles”.

90. AH stated that the French witnessed all the injustice that happened to the Tuareg but did nothing against it. As they were not considered as victims, neither the army, nor the aid organizations did anything for the Tuareg. “The French supported Mali”. The Tuareg were not protected under international law. According to AH, the Malian people wanted to take revenge and collaborated with the French. Many Tuareg would not have considered them as Malians.

91. The expectation he had, based on what he had learned about western societies, is that democracy would bring improvements. They would have expected that with democracy, people would build new mosques and get new freedom. However, the opposite was the case and oppression followed. He did not experience any difference between democracy and dictatorship; instead “we experienced dictatorship and the death of democracy”.

92. After his arrest, he again felt (→ re-enactment) that neither the French prosecutor nor the French doctors would do anything for him. It is true that a French organization assisted when his family fled Mali but when the French (authorities and military) withdrew, none of what was promised by the French occurred. His people were left to fend for themselves against the Malian government. It was a repetition on an individual level of his experience of persecution as a member of an ethnic group. No one would try to understand his perspective and acknowledge the oppression. Traumatic re-enactment refers to a pattern of behaviour were the individual repetitively relives the past.

5.4 AH’s prior understanding of and experience with mental health professionals

93. AH stated that his early experience with doctors (note. AH often used the word “doctors” when he talked about (mental) health professionals from different professions) wasn’t pleasant. The first and second “doctors” he had contact with also participated in the alleged torture, according to him. He also reported that he was not examined at the detention center when he arrived and that numbers (e.g. weight) from Bamako were simply copied into the detention center’s records They did not write their own reports and did no systematic diagnostics. He also stated that some doctors did not respect his decisions to refuse to talk about stressful experiences. Instead, they wanted to have details.

94. However, AH also reported that he used to be open to different approaches. “I believe that a psychologist can help and I also believe that a Sheikh can help” / ”every disorder has its treatment”. When doctors came to tell him that EMDR would help him against the bad dreams, he took courage and gave EMDR a chance. When he did not feel an improvement but rather a worsening of his mental health, he refused further EMDR treatment and reverted to the religious treatment he was used to.

95. He reported, “Of course, I know that Western medicine has the capability of healing mental problems. But I am unfamiliar with it. I try to learn from everyone I meet, the woman doctor from New York gave me breathing exercises and other things that were helpful but I don't deeply understand. But I have grown up watching television and cartoons. And I was the first person to have a Hotmail account, and a PlayStation. And so I am familiar with these. But I don’t know if one day I may become possessed by a Jin and will need a different kind of specialist. But I believe the two can go together.”

96. In addition, AH was very diplomatic when commenting the reports previously written on him (e.g., when being asked which report reflects him best, he responded “They put all the efforts in it” and that he “doesn’t want to judge any one).

6. DISCUSSION OF MEDICAL REPORTS

6.1 Psychological Report by Katherine Porterfield (22.5.2020; MLI-D28-0002-0535) and addendum report (8.7.2020; MLI-D28-0003-2071) – instructed by the Defence

97. In her first report, Dr Porterfield conducted 30 hours of face to face interviews with AH over 5 days in July/August 2019. She additionally spoke with him on six occasions by telephone, between April and May 2020, apparently for about one hour on each occasion. She conducted a further telephone interview with AH in July 2020, at the request of his defence solicitor for approximately 75 minutes.

98. Dr Porterfield has assessed AH as suffering from Posttraumatic Stress Disorder with dissociative features.

99. Dr Porterfield also diagnoses a Depressive Disorder.

100. Dr Porterfield expresses concern that the EMDR AH received in 2018/2019 made his condition worse (p 5 of report dated 14.7.2020). We cannot evaluate whether EMDR has worsened AH's condition, as there is no longitudinal information that we can refer to. However, we would suggest that EMDR can be effective in individuals with PTSD, where there is also dissociation, provided it is administered by someone who is trained and experienced in the use of EMDR in this population (e.g. Knipe, 2018). We believe that, in AH's case the treatment was carried out by a trained mental health professional and was appropriate. AH withdrew from treatment after 5 sessions, which is often sufficient to bring about significant benefit, including in individuals with dissociative symptoms. Moreover, it has to be considered that improvement in PTSD symptoms usually does not occur after the end of exposure sessions. Improvements can be obtained three, six and even 12 months after participation in trauma exposure therapy (e.g. Neuner et al., 2003). This means that the improvement of AH's mental health status related to reading the Koran he reported to us might well be related to a delayed positive treatment effect. Whereas this possibility cannot be ruled out it was unlikely to have been the case.

101. Dr Porterfield raises concerns as to AH's fitness to plead and to stand trial, given the potential of the Court process to trigger posttraumatic re-experiencing and dissociative symptoms, thus undermining his capacity to participate fully in his trial. This notion was carefully considered in the POE's planning of the assessment.

6.2 Report by Dr Juliet Cohen (18.5.2020 and 12.6.2020) – instructed by the Defence

102. Dr Cohen interviewed Mr Al Hassan on two occasions in The Hague for approximately four and a half hours in total and conducted a full physical examination. She also has access to his medical records from the detention centre. It is not entirely clear what Dr Coen's instructions were.

103. She outlines his family and personal history, his arrest and detention, including experiences of torture, both directly experienced and witnessed and his progress since his transfer to The Hague in March 2018.

104. She notes that Mr Al Hassan has received extensive medical (including dental treatment and physiotherapy) and psychological treatment since coming to the Hague. His main complaints relate to recurrent headaches and poor memory, for which he was referred to a neurologist. No physical abnormality was identified. Al Hassan also complained of pains in his jaw, in his lower legs, abdomen and back and a continual feeling of his exhaustion. Some of these symptoms had resolved or at least improved over time.

105. Dr Cohen conducted a full physical examination and provided a detailed record of any injuries/lesions/abnormalities identified.

106. She concludes that whilst around 19 lesions were probably attributable to non torture related incidents, there were many lesions that appeared to be consistent with the torture described by Mr Al Hassan.

107. Dr Cohen speculates that Mr Al Hassan may have suffered from poor memory due to peri-traumatic amnesia, during torture. However she did not directly assess Mr Al Hassan's memory, or carry out a psychological assessment. No abnormalities of memory or concentration were elicited by her during her examinations.

108. Dr Cohen recommends further evaluation of Mr Al Hassan's persisting pain in his jaw and abdomen and dietary supplements of vitamin D.

109. In her second report, Dr Cohen states that, taken together, Mr Al Hassan could be considered to have been subjected to Cruel and Inhumane and Degrading Treatment (CIDT) "or even torture".She outlines the elements of his treatment that potentially meet the criteria for CIDT. These appear to relate to Mr Al Hassan's detention in Mali, rather than to his experiences in The Hague.

6.3 Psychiatric report by Dr Sandra Crosby (undated) – instructed by the Defense

110. Dr Sondra Crosby is a physician who was instructed by the defense to, " advise on whether interviews conducted by ICC prosecutors of detainees, currently or formerly held, by State security services, in incommunicado detention in Bamako (a facility that is not accessed by monitors from either the United Nations or the Red Cross) were compatible with the standards under the Istanbul Protocol to have conducted an interview/evaluation of survivors of torture."

111. Dr Crosby was asked to formulate her opinion on the basis of documents and interviews provided by the defence counsel. The matters covered in the report related to issues of voluntary informed consent, was it properly obtained by OOP and what conditions and factors mitigated against the obtaining of said consent whilst AH was obtained based on his conditions of confinement.

112. Dr Crosby was asked to comment on whether or not the OTP physician adequately identified psychological or physical factors that could influence JCC interviews.

113. Furthermore:"Would interviews that were conducted by OTP investigators impact future testimony that will be organized by video link?" And: "Is it feasible to evaluate this question on the basis of the information we have about the individual witnesses. and the circumstances of their interviews by the ICC Prosecution (taking into account the environment, identity of questioner's temporal proximity, the effects of earlier incidents of torture)?"

114. Dr Crosby stated in a section "Limitations to Report" the following. "This report is based on evaluation of documents provided by defense counsel. I did not interview or evaluate the witnesses. I stated in my conclusion to this report that it would not be safe or ethical to interview detainees in the environment where torture has occurred and where safety cannot be guaranteed. A request has been submitted to interview witnesses P-0150, P- 0626, and P-01 11, who are no longer held in detention by the Mali authorities."

6.4 Psychiatric report by Dr Lamothe (11.7.2020) – instructed by the Prosecution

115. Dr Lamothe was asked to comment on AH's capacity, in the light of the concerns raised by Dr Porterfield. It does not appear that Dr Lamothe directly interviewed AH or conducted his own examination.

116. Dr Lamothe comments that all detainees are bound to experience some degree of stress/distress because of the circumstances in which they find themselves. He challenges the notion that AH has

experienced any symptoms of chronic depersonalisation or dissociation, specifically noting AH's ability to engage with Dr Porterfield in coherent and fluent descriptions of his experiences. He notes that AH was able to complete all the interviews, without walking out or requiring a break.

117. Dr Lamothe suggests that there may be an element of control or possibly manipulation, in terms of who and when AH chooses to engage with. He notes that AH has never complained to medical professionals throughout his detention of feeling under duress or other symptoms that could relate to his torture experiences.
118. Dr Lamothe further observes that AH has not manifested any functional impairment as he was exercising and engaging with staff and detainees. Nor was he experiencing extreme levels of distress, in response to repeated interviews and investigations.
119. Dr Lamothe concludes that there is no evidence or PTSD, or other medical condition that might impact on AH's fit to plead or to stand trial. He adds that every sign points "in favour of his capacity".

6.5 Report and statements by Prof. Bertrand Ludes (23.07.2020) - Instructed by the Prosecution

120. Professor Bertrand Ludes (23.7.2020) prepared a report at the request of the prosecution, which commented extensively on AH's medical condition.

121. He specifically addressed the findings and conclusions of Dr Cohen i.e. that AH's injuries were in the main consistent with his history of torture.

122. Professor Ludes, by contrast stated that AHs injuries and lesions could not be dated and were inconclusive i.e. with respect to whether they had been caused by torture.

7. MEDICAL & PSYCHOLOGICAL ASSESSMENTS OF AH

7.1 Psychiatric Mental State Examination

123. Mental state with particular reference to 1) the presence of any diagnosable psychiatric illness or disorder, and 2) psychological assessment with particular reference to alleged experiences of torture and detention and impact on the current trial.

7.1.1 General Appearance, Orientation and Behavior

124. During the face-to-face assessments, AH was dressed in traditional clothes and appeared to be well kempt. During the remote assessments, AH appeared calm and did not exhibit signs of distress or agitation. He appeared to be concentrating and paying attention throughout the interviews. He listened carefully to the questions, he took his time to consider the questions before responding and he was able to ask for questions to be repeated if he did not understand them. His comprehension was good and his answers were appropriate and to the point.

125. AH was courteous and polite and expressed his thanks at various points. He was able to assert himself appropriately, for example asking for regular breaks for prayers. He did not appear to be excessively compliant or suggestible. He did not appear to be prone to exaggeration explored. Moreover, AH's general appearance and body posture changed completely when being handcuffed and when the handcuffs were being removed. During both processes he avoided eye contact, with his eyes towards the ground, and avoided any further interaction. He appeared to be utterly ashamed of this procedureof distress/ fabrication of symptoms However, on a couple of occasions during the face-to-face interviews, he started to drift away with his thoughts when he started talking about the alleged torture, making it difficult for MK and RWP to re-orient him in the here and now. On two occasions he

showed marked distress [redacted]. RW and MK perceived these outbursts as coherent and genuine expressions of distress appropriate to the subject matter being.

126. When MK and RWP commented on what they had observed during the process AH said, “it is as if you had read my mind. Every time I think, who is the guard? Some are better than others but I do not wish to comment on who as I do not want to upset anyone. When I see certain guards I think praise God but when it is others I think God give me strength”

127. AH appeared to be concentrating and paying attention throughout the interviews – remote and face to face. He listened carefully to the questions, he took his time to consider the questions before responding and he was able to ask for questions to be repeated if he did not understand them. His comprehension was good and his answers were appropriate and to the point. Even in the evening sessions after attending court, he still reported to “feel pleasant and at ease” with the participation in the interviews. When giving AH the chance to speak freely and choose a topic, he used to direct the interview to his cultural and biographic background and his incomprehension of the application of international law and human rights, as well as his disappointment and sense of betrayal.

128. AH appeared to be co-operating fully with the interviews. He was courteous and polite and expressed his thanks at various points. He was able to assert himself appropriately, for example asking for regular breaks for prayers.

129. AH did not appear to be excessively compliant or suggestible. He did not appear to be prone to exaggeration of distress or fabrication of symptoms. When he was for example asked to freely report symptoms he experiences, he highlighted the headache, poor sleep, ruminations, and the difficulties he would face sitting in court. He did not use these opportunities for feigning distress or malingering. During the assessment of symptoms of PTSD he denied various symptoms that would have supported a current diagnosis including dissociative features.

130. MK and RWP had the impression that AH resorted to self-suggestions about his current status -a self-help strategy- that bolsters his coping / defence strategies. He also used to resort to self-affirmations (“I will have to attend the court proceedings and I will find ways to help myself” / ”Humans try to find solutions”). When for example being asked about his expectations about the future in case of acquittal, he was very positive about the way his family and tribe would welcome him and that he would not expect any major difficulties. Even his health would immediately improve. There were also no obvious signs that he was being deceitful in his responses to the POE AH admitted that Sharia was applied in his tribe but that there were differences in the application between Tuareg [redacted]. He spoke very openly about his impression of the fairness of the trial, the problems that arose with the appearance of the French and his experience with international law, also being aware that his concerns could become part of this report. This was contrary to the fear he expressed: “I have learned not to make your doctor and your judge angry”.

7.1.2 Talk

131. According to the interpreters there was no abnormality of form, flow or content in his speech. They considered his responses to questions to be direct and to the point. He was not observed to yawn during the remote interviews although he did say he was feeling tired. On the second day of the face-to-face interviews, AH reported that he had not slept well. He yawned several times and confirmed that he was tired. His talk was fluent with no noticeable gaps or ‘disconnects’, but he was very preoccupied with on his feeling of betrayal and his concerns about the confrontation with the Prosecutors in Court during his face to face interviews.

132. With regard to the procedure of handcuffing, AH stated that there were different types of handcuffs ("The rectangular ones are even worse […] they hurt me and I feel reminded of the time in Bamako"). The guards differed in their ability to use cuffs. This discomfort was in addition to the humiliation and fear he reported. .

133. AH repeatedly talked about the adverse effects of sitting in Court and being confronted by the Prosecution, as if they had without questioning accepted his torture and did not intervene. He feels threatened but also anger and despair.

134. He said that he had made some adjustments to the situation in Court, that help him to cope with the situation. He recognises that "It is important for me to follow the Court proceedings and also instruct my lawyer". Consequently, the absence of apparent signs of fear during the Court hearings is not an indicator for the actual threat AH experiences ("this is too painful").

135. AH reported that some of the files are a potential trigger for him too. He has therefore not read some of the Court documents that have been disclosed to him.

136. Besides his fear of being confronted with trauma reminders, this fear is also confused with the fear of retaliation ("you cannot complain to the person who is flogging you" / "I cannot tell you, because you are not there at the detention centre (to watch over it)".

137. AH repeatedly expressed his concerns that disclosing details about his adjustments would result in negative consequences for him. This fear is in line with his learned conviction to not let your enemy know anything personal about you.

7.1.3 Mood

138. AH was generally somber and somewhat flat in mood, but this appeared appropriate to the circumstances. When interviewed remotely, he did not appear clinically depressed i.e. there was no retardation of expression, thought or speech. During the face-to-face interviews, his affective ability to express changes in emotions appeared to be adequate on a superficial level. He expressed a sense of despair about not feeling protected by the law.

139. AH said that he feels anxious quite a lot of the time, although he is able to relax when he needs to. He said that, when he gets anxious, his heart rate increases, he often feels nauseous (but doesn't vomit) and he gets migraines. He said that he was prone to bad headaches/migraines even before his arrest, but they have become more frequent and severe since his arrest and torture. In the beginning he was afraid that it could be a sign of Coronavirus. Particularly on the second day of face-to-face interviews, AH reported he was suffering from migraine and asked for paracetamol.

140. AH said that he feels particularly anxious if he is not given information about what is happening, for example if he is transported somewhere without anyone explaining where he is going and the purpose. He gave as an example being brought to the interview with GM on day one, as the guards had not explained that he was being seen by a psychiatrist. On the second day, however, the guards had told him where he was going, so he had felt calmer.

141. AH said that another situation that makes him feel very anxious is being handcuffed as it brings back memories of when he was held in the state prison in Mali. In addition to fear, handcuffing is also related to intense feelings of shame. These were clearly visible in particular during our face-to-face interviews when he was being handcuffed during all movements within the ICC. He said that, whenever the handcuffs are put on him, he feels "great humiliation, fear and trembling." He feels particularly anxious when he is being transported (from the DC to the Court) and "seeing the people who partici-

pated in the torture in Court". He feels more relaxed once he is back in the detention center. He said that, when he feels anxious or "fear" he prays to God (he has always been very religious and found comfort in prayer) and tries to stay strong.

142. Although AH said that at times he feels hopeless, he still feels hopeful about the future. He said that he feels optimistic that the Court will arrive at the right decision and there will be a fair outcome… "I feel the future will be better". He said that things that make him feel better are talking to other detainees ("I can laugh with them and forget my worries") and to sympathetic guards. He is also comforted and feels calmer when he reads the Koran, which he does every day.

143. In the event of being released from prison, AH would plan to go back to his family. He would not have any fear of returning to Mali. Again, to what extent this appraisal of the situation is a sign of absence of fear has to e differentiated from being a sign of positive self-affirmations in terms of coping / defence mechanisms (see below).

144. AH said that when he had been in the state security prison "I had no information, I knew nothing , there was no sunlight, I didn't know about my family". He said that when he arrived in The Hague, he felt "as if I had been extracted from a hole….I saw daylight, I could speak with my family, I had human contact …I could eat, drink and pray … I felt at peace"

145. AH said that he had felt a sense of relief that his situation was not as bad as it had been when he was in Mali. When he realized, however, that he was charged with international war crimes he experienced feelings of "sadness, anguish and fear….it was a real shock".

146. AH thought that as he had become more used to the detention center and had got to know people, he had felt more confident and "safe". However, he still feels sad about his family, who he misses, and he worries about the future.

147. AH said that he sleeps reasonably well. He goes to bed at around 10 or 11 pm and sleeps through the night, although sometimes he finds it difficult to get off to sleep. We asked him what stops him going to sleep straight away. He said "If I drink coffee in the evening or I start thinking about my family, then I cannot go to sleep". AH is generally woken in the early hours of the morning by an alarm on his watch, which wakes him for morning prayers. He attends prayers and then, if nothing else is happening, he goes back to bed and sleeps a bit more. AH said that when he first wakes in the morning he feels "lazy…tired…often feel I have not had enough sleep". However, he manages to get up, has a shower every day, and gets dressed even if there is no program for the day. On the third day of the interview he reported that he had slept that night for almost nine hours without experiencing any nightmares, although he participated in an interview the previous day that focused on stressful personal events and experiences. One had the sense that the experience of speaking freely without hostility or judgment about him or his situation had brought him a sense of relief. .

148. AH said that he had started experiencing nightmares when he was in prison in Mali, but after he came to The Hague they became less frequent "as there was nothing to remind me of what happened". The absence of present trauma triggers outside situations that resemble the alleged torture/interrogation experiences also has to be considered in the evaluation of the present diagnosis of PTSD, which we outline below.

149. AH said he usually has a nightmare once every few weeks. They tend to happen more often on the days he has to attend Court. The previous week, he had had a full day in Court and had had nightmares twice that week. AH said that he sleeps better the nights when he does not have to attend Court the next day.

150. AH was asked to describe the content of his nightmares. He said that there were three main themes: 1) "fleeing from my torturers", 2) "Seeing the Court handing me back to Mali", and 3) "People running after me …and killing me …sometimes my hands are handcuffed". He said that the nightmares also tend to surface when he thinks about the torture.

151. AH said that he is able to control his anger and he has not got into fights or been physically aggressive, since coming to The Hague. He did not consider that he finds it more difficult to relax or is generally more on edge than normal. He told GM after her interviews that he felt relaxed and intended to return to his room and sleep, once the session had concluded.

152. AH said that he has been eating well in the detention centre and considers the food is good and sufficient in quantity. He said that his weight has increased a lot since coming to The Hague. He has not experienced any loss of appetite.

7.1.4 Self-Harm & Suicidality

153. Mr Al Hassan denied any self harm or suicide attempts since coming to The Hague. However, he said that at times he has contemplated suicide, mainly because of the bad situation he is in, away from family and charged with terrible crimes he is innocent of (particularly rape). He said, "If suicide was accepted in Islam then I would have killed myself long ago" Instead, he "would take everything as it comes; it is God's fate".

154. AH reported to GM that he had not self-harmed during his detention. He said that, early in his detention, he had gone on a hunger strike for a few days, with a number of other detainees. This had been planned by other people. He said that he can no longer remember what the strike was about. AH said that he does not consider himself to be an aggressive or angry person by nature. He considered that in the past year or so, he has been a bit more impatient and irritable in his interactions with others, however this is only because of the situation he finds himself in and because he has been accused of doing things he has not done.

7.1.5 Thought

155. AH denied experiencing auditory or visual hallucinations and there was no evidence of psychotic symptoms on examination.

156. MK asked AH how much of the time he thinks about the torture. He said that if he sees a film about torture, or if he speaks about torture, it reminds him of what happened and makes it "difficult to get over".

157. There was no evidence of abnormal thought, form or content and no evidence of any psychotic ideation. AH was very preoccupied with his arrest, torture and detention. He said that he thinks about the torture "most days" and in particular if he sees a programme about torture. However, he thinks less about the torture now than when he first came to The Hague. He said that, when he thinks about the torture, he asks God to take revenge on those who tortured him. He feels angry about the charges he is facing, which he believes himself to be innocent of, marked by a chronic thoughts of injustice, unfairness and humiliation.

7.1.6 Cognition & Level of Intelligence

158. AH said that his memory and concentration had been bad whilst he was under arrest, but they have been improving since he came to The Hague. He said that he has found himself remembering a lot of things that he thought he had forgotten when he first arrived in The Hague. AH said he feels he is thinking more clearly now than when he first arrived. He did not consider that he currently has any memory impairment, or memory gaps.

159. AH presented as above average intelligence (this was not formally tested).

7.1.7 Insight

160. AH does not consider himself to have any mental health problems at present. He said that he does not need any psychological treatment or support, although he added, “You should know, you are the doctors”.

161. He believes that for the current moment, his mental health problems are best treated by reading the Koran (“This helps me to keep calm […] I read 1-2 verses a day”.) However, he feels able to ask for help for his physical health. [redacted] and the Iman has advised him to read the Koran to help with his problems. He said that reading the Koran does make him feel more “at ease”.

7.1.8 Memory

162. Based on the panel’s evaluation, AH’s long-term memory was intact (this was not formally tested). He could recall experiences from his past (although they could not be verified), the time of his arrest and interrogations, and events from the time in the detention center. No memory disturbances were reported spontaneously.

163. Regarding short term memory, AH also displayed no disturbances. He could remember the topics he discussed with the POE and even continue the conversation after breaks (e.g. “I thought about the issue of rape during lunch and wanted to add something” / ”I think that I had the opportunity to tell you everything I wanted; my target was to show you the other side of the truth”). During the face-to-face assessment, he could recall the content of the remote assessment and how he felt. His report disclosed to MK and RWP adequately matched GM’s documentation.

7.2 Psychological formulation of AH with particular reference to how torture and detention experiences may impact on the current trial.

7.2.1 Betrayal Trauma

164. Betrayal is a violation of implicit or explicit trust (e.g. Freyd, 2003). The closer and more necessary the relationship, the greater the violation. Betrayal trauma postulates that the closer and more intimate the connection, the relational closeness, between the victim and the perpetrator the more intense is the experience of betrayal. Traumatic experiences that are associated with high betrayal compound the traumatic events and worsening of the subsequent effects of that trauma. Furthermore, the more dependent an individual is on the perpetrator for his survival the greater the sense of betrayal and the complexity of the ensuing traumatic response. (Martin et al., 2013). Current theoretical and empirical work, however, indicates the need to identify and evaluate other aspects of trauma (e.g. Gómez, 2018 & 2019).

165. Betrayal has been proposed as a pertinent, distinct and complementary factor that can explain effects of trauma, not accounted for by life threat alone and which may play an important role in the aetiology of Post Traumatic Stress Disorder (Kline et al., 2020).

166. Experiences of violation perpetrated by others on whom an individual depends - betrayal traumas - may interfere with social capacities, including the ability to make healthy decisions about whom to trust (Klest et al. 2019). Betrayal trauma theory posits that survivors of trauma are at increased risk of making inaccurate trust decisions in interpersonal contexts, thus interfering with intimacy. High betrayal trauma exposure is associated with lower levels of self-reported general and relational trust. In general it is not to our survival or reproductive advantage to go back for further interaction to those who have betrayed us. AH is dependent upon the authorities for the resolution of the matter for which he is charged by a regime that he believes is complicit in his torture. Current psychological research points to the fact that traumatic experiences where there is a high level of betrayal associated with these experiences such as described result in a traumatic sequelae that is more enduring, complex and severe.

167. AH has given a long and complex history of traumatic experiences associated with high levels of betrayal from a very early age. Although the focus of the previous experts instructed in his case has been PTSD - in relation to his account of torture - there has been insufficient focus on other cultural expressions of trauma, betrayal trauma and the impact of ACE's on the development of his personality. These factors complicate the diagnosis of PTSD. The risk is that questions (culturally and clinically) more relevant to his fitness to plead and in exercising his fair trial rights have been insufficiently considered and explored. In survivors of prolonged, repeated trauma the symptom picture is often far more complex.

168. The limited time available to POE made a detailed exploration of these matters impossible as the issues described only came to light during the interviews and after careful consideration of the material presented.

7.2.2 Psychological Testing

Clinician-Administered PTSD Scale for DSM-5 (CAPS-5) – Past Month

169. For the assessment of potential PTSD symptoms in relation to AH's fitness to plead a) in general , and b) more specifically in relation to the court setting, the Clinician-Administered PTSD Scale for DSM-5 (CAPS-5; Weathers et al., 2013) served as a measure to guide the assessment by MK and RWP. Contrary to the manualized application of this measure, MK and RWP tried to identify the outlined symptoms in the artificial context of the Detention Centre and Covid-19 restrictions, by trying to understand the manifestation of traumatization in this specific setting.

CAPS-Criteria

170. **Criterion A:** Exposure to actual or threatened death, serious injury, or sexual violence in one (or more) of the following ways: 1.Directlyexperiencing the traumatic event(s). 2.Witnessing, in person, the event(s) as it occurred to others. 3.Learning that the traumatic event(s) occurred to a close family member or close friend. In cases of actual or threatened death of a family member or friend, the event(s) must have been violent or accidental. 4.Experiencing repeated or extreme exposure to aversive details of the traumatic event(s) (e.g., first responders collecting human remains; police officers repeatedly exposed to details of child abuse). Note: Criterion A4 does not apply to exposure through electronic media, television, movies, or pictures, unless this exposure is work related:

171. The evaluation of the exposure to trauma could only be reconstructed from the files made available to the POE, in particular the reports of Crosby, Cohen and Porterfield report. The POE was not permitted to assess the specific incidents that happened to AH during the period of alleged torture. This is a factor which significantly limits our assessment.

172. Moreover, to the best of the POE's knowledge, no independent investigation has been conducted regarding 1) AH's allegation of torture and ill-treatment and 2) his assertion that the OTP was complicit in that torture. As it stands the experts instructed by the Prosecution and Defence are not in agreement as to the allegation of torture. When assessing the account of a victim of torture one may only have the self-report of the victim to work with as other sources of information may not be available. However, every effort must be made to obtain all other sources of collateral information in assessing the allegation of torture.

173. An independent investigation of this accusation would help to clarify the relevant issue of trauma-exposure, trauma-related health consequences and their impact on AH's ability to stand trial and exercise his fair trial rights. As AH reported that everything had changed due to the alleged torture and that he had not experiencedmental health symptoms prior to his arrest, all trauma-related questions were assessed in relation to trauma triggers that stem from torture or interrogation experiences.

174. **Criterion B1:** Recurrent, involuntary, and intrusive distressing memories of the traumatic event(s). AH did not spontaneously report intrusive memories during the day. Even after being asked if memories or pictures came up during the Court sessions, he declined to answer.

175. Intrusions usually follow the exposure with (subtle) trigger cues. It can be hypothesized that AH does not face these trigger cues in the low-stimulus environment of the detention centre. Being confronted with everyday situations like job-interviews, contact with unknown people, facing other triggers like certain light conditions or rooms might not be present in his current life and thus preclude involuntary intrusions occurring.

176. In Court AH tries to avoid looking at the Prosecutor (his self-report), which could serve as a self-distracting coping mechanism that prevents this symptom occurring in the face of a triggering stimulus (the Prosecutor).

177. When the issue of torture arose during the face-to-face interview, AH started to lose eye-contact and drifted away. Even in the contact with the interviewers MK and RWP, where he showed tendencies to re-enact interactions with people who allegedly harmed him, this could indicate a manifestation of an involuntary recollection of traumatic experiences, although it does not correspond with obvious trauma-symptoms that might occur in victims in their natural living environment.

178. **Criterion B2:** Recurrent distressing dreams in which the content and/or affect of the dream are related to the event(s). Nightmares were clearly reported, although these were not direct re enactments of the torture. AH also reported an increase in nightmares after Court sessions, which could speak for a subclinical but still significant manifestation of trauma symptoms.

179. **Criterion B3:** Dissociative reactions (e.g., flashbacks) in which the individual feels or acts as if the traumatic event(s) were recurring. Dissociative responses largely vary in their intensity. No dissociative experiences were experienced that would justify the classification as a dissociative symptom or even the diagnosis of a differential diagnosis from the dissociative spectrum. However, when talking about the alleged torture, AH had the tendency to drift away with his thoughts. Unlike Dr. Porterfield, MK and RWP immediately stopped this process by re-orienting AH in the here and now, as they had agreed with him that they would not talk about the bad memories. However, he clearly demonstrated tendencies that are coherent with dissociative symptoms in trauma survivors.

180. **Criterion B4:** Intense or prolonged psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event(s). It was remarkable that AH was constantly concerned with his sense of betrayal and dehumanization. Marked distress was clearly present. For the evaluation of the B4 symptom, besides the physical harm related to torture, the harm on the relational level and the destruction of trust can also be considered as a cue “that symbolizes or resembles an aspect(!) of the trauma”. This reasonable and justified interpretation of the meaning of this symptom is a clear indicator that AH fulfills this criterion.

181. **Criterion B5:** Marked physiological reactions to internal or external cues that symbolize or resemble an aspect of the traumatic event(s). Marked physiological reactions could be observed when AH talked about the aforementioned incidents, as noted above.

182. **Criterion C1:** Avoidance of or efforts to avoid distressing memories, thoughts, or feelings about or closely associated with the traumatic event(s). AH reports a number of activities (pre-Covid) he engaged in at the detention centre. The engagement in activities can on the one hand be interpreted as a positive adaptation to his environment, speaking for the absence of any mental health symptom. However, these activities, or at least some of them can also be rated as detached / avoidant coping mechanisms; reading the Koran was clearly one such strategy. The limited number of differentiated observations of AH in his daily environment disclosed to the POE is a limiting factor in our assessment.

183. **Criterion C2:** Avoidance of or efforts to avoid external reminders (people, places, conversations, activities, objects, situations) that arouse distressing memories, thoughts, or feelings about or closely associated with the traumatic event(s).In the restricted environment of the detention centre, the number of potential cues which could serve as trauma-reminders and that need to be avoided, is limited. AH seemed to have adapted to the detention centre context by developing adjustment and coping strategies. He reports several reminders, such as action movies, handcuffs, court documents, or exposure to the Prosecutor, that he constantly tries to avoid as they cause distress. Moreover, during the face-to-face interview, AH refused to drink. This resembles a strategy described in the Porterfield report (page 10, 5th para), which he developed to avoid being handcuffed and blindfolded during his time in the prison. If this comparison is valid, it would be an indicator that the here and now is still occupied by past experiences (=PTSD) and support a positive rating of this symptom.

184. **Criterion D1:** Inability to remember an important aspect of the traumatic event(s) (typically due to dissociative amnesia and not to other factors such as head injury, alcohol, or drugs). AH reported that he remembers all the incidents very well. However, as no objective information is available, potential memory gaps cannot be adequately assessed.

185. **Criterion D2:** Persistent and exaggerated negative beliefs or expectations about oneself, others, or the world (e.g., “I am bad,” “No one can be trusted,” “The world is completely dangerous,” “My whole nervous system is permanently ruined”). This criterion is clearly met in a markedly elevated way (see various examples outlined above, for example in the background section).

186. **Criterion D3:** Persistent, distorted cognitions about the cause or consequences of the traumatic event(s) that lead the individual to blame himself/herself or others. AH feels deeply disrespected and dehumanized as an individual, a Muslim and a Tuareg. His despair can be interpreted as another manifestation of alleged torture, taking into account his deep sense of betrayal that he as an individual is not protected by international law and international human rights.

187. **Criterion D4:** Persistent negative emotional state (e.g., fear, horror, anger, guilt, or shame). Although AH reported himself to be a calm person who tries to avoid conflict (“when I had a conflict with other prisoners I separated myself for a few months"), his negative emotions related to the alleged trauma-

related injustice were strongly present during different occasions in the face-to-face-interview and even manifested in feelings of revenge. Despite this he is reported as engaging happily with fellow prisoners and some guards, as well as deriving enjoyment from activities such as [redacted], which he was allowed to do before the current coronavirus restrictions.

188. **Criterion D5:** Markedly diminished interest or participation in significant activities. AH is currently placed in the Detention Centre subject to strict Corona restrictions. He is able to enjoy activities with other inmates or the guards and also reports loving feelings for his family and his kids. However, no information is available as to whether any impairment would occur if AH were back in his daily living environment in Mali. This issue, which cannot be solved for any of the other criteria as well, is still relevant for the evaluation of a potential traumatization and risk for the eruption of PTSD symptoms, although he currently does not display similar symptoms in safe or stable or artificial living conditions.

189. **Criterion D6:** Feelings of detachment or estrangement from others. AH reports that there are people whom he trusts, including his lawyer. However, it was apparent that AH has significant distrust in other people and is constantly alert that people in his environment could be part of the group of people belonging to the prosecution or the alleged torturers (e.g. his not feeling comfortable in the presence of a guard during the interview).

190. **Criterion D7:** Persistent inability to experience positive emotions (e.g., inability to experience happiness, satisfaction, or loving feelings). No indicators could be identified at the time of the assessments.

191. **Criterion E1:** Irritable behavior and angry outbursts (with little or no provocation) typically expressed as verbal or physical aggression toward people or objects. AH constantly seems to control his behaviour (→ you should not make your doctor or judge angry). However, on two occasions, AH displayed a significant outburst of anger; these occurred when MK began to make more detailed explorations related to his understanding of fitness to plead. AH became visibly upset and angry although his anger was a reflection of his own confusion on the subject as the point being made was not unsympathetic to him. MK and RWP gradually helped AH to understand what was being said through further illustrations and examples, at which point he calmed down. Thus, the artificial interview setting and a potential level of self-control could mask these symptoms as the topic which triggered the outburst was minor compared to other subjects he will have to face under cross examination.

192. **Criterion E2:** *Reckless or self-destructive behavior.* Mr. Al Hassan denied any of such behavior.

193. **Criterion E3:** Hypervigilance. As reported by GM, AH did not feel secure during the first day of the interview, because he was not adequately informed about the setting and her role. Similar observations were made by MK and RWP. Hypervigilance was present, although the level and their relation to specific trauma-exposure could not be evaluated./ There was no evidence of any enhanced sensitivity to environmental threat during the interview.

194. **Criterion E4:** Exaggerated startle response. No startle response was observed during any of the interviews. However, GM could not watch AH's reactions during the interview and the conference room was prepared in such a way that no sudden trigger cues could have evoked a startle response. Likewise, MK and RWP had prepared their setting in a way to make AH feel as comfortable as possible, purposely avoiding any cues that could elicit a startle response. Due to the lack of clinical notes from the detention centre, and the fact that the absence of descriptions of an elevated startle response in such notes does not imply that he would not startle, this symptom could not be adequately rated. AH himself did not describe an elevated startle response.

195. **Criterion E5:** Problems with concentration. No problems with concentration were observed during most of the interview. However, whenever AH spoke about torture-related issues, his attention to the here and now and the interview setting would change. This is consistent with symptoms in other trauma survivors.

196. **Criterion E6:** Sleep disturbance (e.g., difficulty falling or staying asleep or restless sleep). AH reported difficulties in sleeping and that he moves around in bed during the face-to-face interviews. For the evaluation of this symptom, symptoms of depression have to be differentiated from symptoms of trauma (-exposure). If 1) AH feels betrayed and dehumanized, and 2) this feeling indicates the major quality of the current manifestation of trauma exposure, and 3) this feeling and its associated thoughts disturb AH's sleep, it can be indeed rated as a marked symptom of PTSD. No persistent sleep abnormalities were elicited by GM in the remote asessment. Moreover, AH has never complained to the detention centre doctors about lack of sleep. He reported occasional nightmares, however these do not wake him at night, he merely remembers them in the morning when he wakes.

197. **Criterion F:** Duration of the disturbance (Criteria B, C, D, and E) is more than 1 month. According to AH's report, early symptoms had already occurred during his arrest. However, the reactions to the alleged current threat may not be confused with PTSD, i.e. a disorder occurring in the aftermath of trauma exposure. Moreover, symptom fluctuations are reported. Based on the available information from the files disclosed to the POE, the current state of AH's symptoms can be described as chronic.

198. **Criterion G:** The disturbance causes clinically significant distress or impairment in social, occupational, or other important areas of functioning. It is not clear that this criterion has been met, however access to the detention centre records would have assisted us in answering this question.

199. **Criterion Global Validity of the responses.** AH's responses were consistent between the remote and the face-to-face interview. However, his bodily reactions and interactional behavior were more apparent in the face-to-face interview due to differences in the specific settings. His responses also matched with descriptions found in the reports by Dr. Porterfield and Dr. Cohen. However, a significant factor limiting the validity of the results is that the POE only had restricted access to collateral information and that no objective evaluation of the alleged torture is available.

200. **Criterion Depersonalization.** AH did not report symptoms of depersonalization. Also during the Court sessions that he describes as very stressful when facing the prosecutor, no signs of depersonalization occurred.

201. **Criterion Derealization.** AH did not spontaneously report symptoms of derealization. However, it was apparent to MK and RWP that AH lost contact to the here and now in situations where he started to remember elements from the alleged torture.

7.2.3. Cultural Considerations and Limitations surrounding the Diagnosis of Posttraumatic Stress Disorder

202. If we see all trauma in exclusively psychological terms, our questions will be framed in psychological terms and the answers we get from those who experience trauma will be framed in that way. Ashraf Kagee, a South African psychologist, demonstrated this in his qualitative study of the impact of torture on men and women imprisoned during the Apartheid era. Wary of "the effect of demand characteristics," (in less technical language: questions shape answers and therefore shape what we learn), he chose not to administer a standardized clinical checklist, questionnaire, or structured interview tied to diagnostic criteria. Instead he asked a series of "open-ended questions to learn participants' understandings of the ways that their experience of abuse has affected or is presently affecting their lives"

(Kagee, 2005, p. 627). Unprompted by specific questions, study participants mentioned symptoms eleven times that can be construed as psychological and, indeed, meet PTSD diagnostic criteria (see Table 2 of Kagee, 2005, for complete data). Much more frequently, however, they spoke about "[g]eneral health concerns," current "economic concerns," and "dissatisfaction with the present political situation in South Africa," all of which they related to their experience of trauma and none of which wouldhave been revealed had the interview been restricted to clinical questionnaires (Kagee, 2005, p. 627-628). AH has experienced multiple experiences of betrayal at key developmental periods in his life by authorities who were trusted and who he felt later betrayed that trust, directly comparable to the South African experience reported by Kagee.

203. There are recognized limitations in a purely categorical approach (e.g. failure to capture individual, cultural and religious differences in disorder severity, and clinically significant features subsumed by other disorders or idioms of distress falling below or outside conventional DSM thresholds). The complexity of the human condition does not slot itself neatly into diagnostic categories. The utility of incorporating broader dimensions is evident in the approach taken to this case (e.g. Hinton, & Lewis-Fernández, 2011). For example, addressing PTSD symptoms in Muslim trauma survivors may require clinicians to consider the impact of trauma on the survivor's religious appraisals and relationship with God (e.g. Berzengi et al., 2017). The doubts as to the limitations of key concepts such as PTSD underline the need to use a diagnosis with care confirming the need for a culturally sensitive approach (that is, independent from standard diagnostic categories). A special risk is the misunderstanding of the conclusion that "criteria for a disorder are not fulfilled", which could suggest a lack of credibility, contradict suffering from sequels, or imply that no torture was experienced.

204. The concept of late-onset PTSD was considered. Late-onset PTSD is a prevalent syndrome that characterizes a significant delay between the trauma exposure and the exacerbation of clinically significant PTSD symptoms, sometimes months and sometimes even years later (e.g. Smid et al., 2011). Cumulative future stressors for example that occur after traumatic experiences can cause PTSD symptoms to erupt in individuals who did not display the full clinical picture of PTSD in the period after trauma exposure (e.g. Anderson et al., 2014). Even early warning signs on a subclinical level can occur as precursors of later clinical symptoms (e.g. Korte et al., 2016).

205. It is clear from the records that were supplied to the POE that a clinical diagnosis of PTSD was given and treatment commenced on that basis. (The detention centre records were not provided; the psychological records in particular would have provided helpful information with regard to the basis for the diagnosis.) Dr Porterfield's findings appear to be broadly consistent with the findings of the detention facility. The point is that AH may have met the caseness threshold for PTSD at the time he was diagnosed and treated. If he was misdiagnosed by either by Dr. Porterfield or the staff and treatment commenced on this basis that is another matter.

206. RW and MK take the view that the implications of late onset PTSD must be considered. GM, whose interview with AH was conducted in different surroundings, places less weight on late onset PTSD. The POE as a whole is agreed that AH does not appear from a purely categorical approach to fulfill the criteria for PTSD, and that the treatment was, according to AH, not helpful or effective. However, that does not mean he has not suffered from PTSD in the past nor that he is not at risk for a later development of PTSD.

207. One implication of late-onset PTSD for the case of AH is that traumatization does not necessarily imply the diagnosis of PTSD. There are strong indicators that AH is indeed traumatized, although he does not at this point in time fulfill the clinical criteria of PTSD. However,

208. Another important implication is that measures that aim to prevent harm to AH's mental health could be required although AH does not display a full clinical picture of PTSD at the time of assessment. However, once again PTSD is only one measure and may not even be the most important one in Mr Al-Hassan's case. If for example he lost his sustaining faith in Allah it could have far more catastrophic effects than would be captured in a PTSD diagnosis. This also implies that if AH had been tortured, potential negative mental health consequences could occur years later and even after release from detention, making the provision of mental health services necessary. In this case, those who committed the torture or were complicit in it would be accountable in a psychological sense and potentially legally for the worsening of his mental health status years later.[2]

209. As no access to the courtroom was granted, the assessment of reactions to this specific setting was therefore on his self-report, as opposed to observing his behaviour in the Court.

Mini Mental Status Examination

210. MK and RWP took a validated Arabic version of the Mini Mental Status Examination to the face-to-face interview. However, based on their clinical rating, there were no signs of any such impairment so they refrained from a systematic testing that could have informed a more in-depth assessment.

Mini-International Neuropsychiatric Interview (MINI)

211. Although the POE was not instructed to conduct a systematic assessment of AH's mental health status, MK and RWP utilized the MINI (Sheehan et al., 1998) as a brief structured interview to inform their assessment and account for potential co-morbid disorders that would better explain his symptoms or that could also interfere with his fitness to plead. No other mental disorder could be diagnosed. AH's ruminations and the fixations of his thoughts could not be better explained either by a depressive disorder, or by any other psychotic disorder with features of delusions. The risk for suicidality was rated low.

212. Since no clear indications for the presence of a manifest dissociative disorder were observed, no further psychological testing was conducted.

7.3 Treatment Received in the Detention Centre

213. AH said that, when he first arrived at the detention center he was allocated to a psychologist who he saw for a few sessions. She diagnosed him as suffering from Posttraumatic Stress Disorder and referred him on to a male psychologist, who he was told was a specialist in the treatment of PTSD. AH had then commenced "eye treatment" (EMDR). AH said that the main symptoms he was experiencing at the time were nightmares about the torture and being in the state prison.

214. AH said that the EMDR had had "negative consequences on my situation". He started having constant migraines, his sleep deteriorated and he felt exhausted all the time. He added that the psychologist kept asking him if he had anything to tell him, "but I had nothing to say". He had continued with the process for several months ("I have been patient"), despite the lack of improvement, as the psychologist had told him that it would help. He said that, after he stopped, about a year ago, he felt much better. He has not requested or been given any further psychological help since then. However, he stated that he would be willing to explore the use of EMDR again. He spontaneously stated, "I am

[2] The POE of experts was not instructed to independently evaluate the claim of torture. However, the POE found the account given in the expert reports to be credible and consistent with observations made during the POE's assessment of Mr. Al-Hassan.

willing to accept that perhaps the failure of the treatment was due to my own limitations." The panel discussed the possibility that a review and re-mapping of the EMDR targets could be beneficial if AH ever wanted to re-engage with the process.

215. AH said that the only medication currently being given to him is paracetamol for headaches and occasional medication for stomach pains. He has never been prescribed or asked for medication for his sleep. He has never been prescribed anti-depressant medication and no one had suggested that he should take it. He said that he hates taking medication.

216. AH said that he feels able to ask for medical help and sees a doctor if he feels he needs to see one. However, more recently he has lost confidence in the detention centre GP [redacted]…"I have stopped trusting him…he lied to me …gave me false information" . AH said that this was because Dr Falke had refused to give him his medical file, which he had requested from him. [redacted] had eventually been forced to hand over his file, after several months of dispute, after the Court ordered him to do so.

217. AH said that he had found two or three "false pieces of information that had been written about me". First, [redacted] had recorded incorrect information [redacted]. Second, [redacted], following his arrival in The Hague.

218. AH was asked if he thought that [redacted] was deliberately trying to cause problems or whether this could simply have been an innocent mistake. AH said "I honestly don't know". He acknowledged that, apart from these two entries, the information in his medical records had generally been accurate. He said that he was still willing to see [redacted] for any physical health problems "as there is no one else to see."

219. Being asked whether other interventions helped him, AH responded that doing breathing exercises and sport would have been helpful. Covid-19 has made these difficult (see next section 7.3).

7.4 Impact of COVID lockdown on AHs Psycho-social Functioning

220. AH said that he had had to stop all the activities he had been involved in prior to Covid: education, art, making things in crafts. Before, [redacted], which was no longer possible. The worst deprivation had been not seeing his family. He said that this has made him feel isolated and generally cut off from the world. Prior to Covid they had been visiting him.

221. AH reported that when Covid hit it was catastrophic for him. He said that all his actions in the detention facility were efforts to build a sense of family and community in the absence of all that he had lost. The activities described were a means whereby he distanced himself from the thoughts and memories of the past that were constantly threatening to overwhelm him. All the normal ways of relating and being in the detention facility that he had developed as a means of coping were disrupted.

222. He said that he wants to see his family. He does not consider that remote contacts are a reasonable substitute for face to face visits. He does not think that the pandemic is a good enough reason for The Hague to refuse to bring his family over…"they have sufficient money to bring my family over"

223. AH said that he has been finding it difficult to keep himself occupied in the detention centre since Covid restrictions were put in place. The disruption of the close relationship he had established with the guards was particularly devastating. Something as simple as kicking a football brought a sense of relief and normality to his life in prison. The physical and psychological disruption to all of his relationships within the prison, including his family and lawyer, was profoundly distressing for him.

224. Before COVID AH said that he had an organised schedule and his day was occupied doing crafts, [redacted] and attending English classes, all of which he enjoyed. He said that now he does nothing, apart from occasional cooking and speaking with his friends (other detainees). He said that he gets bored very quickly and the days feel very long. He spends most of the time in his room and ends up sleeping for most of the day as there is nothing else to do. There are restrictions in the freedom of movement within the Centre. Before the restrictions, living together with the other prisoners was like a family under one roof. He said that he does not read, though he was not a keen reader, even prior to his arrest.

225. AH said that in general he gets on well with the staff / guards in the detention centre:"I consider them my friends." He said that he has also made friends with some of the other detainees, mainly other Africans." We are all one family …we are able to share our small problems with each other". AH said that he has spoken to some of friends about his experience of being tortured in Mali. He said that it helps him to talk about it, although also finds it quite difficult. He said that the guards were also mostly sympathetic about his situation, but he doesn't like to over burden them with his problems, as they all have their own to deal with.

226. Before Covid restrictions AH said that he had been exercising every day. But now going to exercise creates problems amongst the other prisoners as when one prisoner goes, everyone else is locked in their room, which causes resentment. AH said that he values opportunities for fresh air and exercise.

227. AH said that he speaks to his family twice a week on the telephone. He has refused video calls, for reasons he was unwilling to elaborate on. Early in his detention [redacted]; this stopped a year ago. AH said that he feels upset and angry about this, as he considers it is his right to see his family. He said that he worries a lot about them, particularly whether they have enough money to live on. [redacted]. AH said that he has asked the ICC to arrange for them to start visiting again, but his request has been refused. He finds it difficult to accept that this may be a necessary restriction, created by COVID19, though he acknowledged that other detainees have experienced similar restrictions to visits from family members.

228. AH said that the things that make him feel better and help him relax (apart from family visits) [redacted]

229. AH said that pre Covid, he had also been doing crafts in the detention centre and had made a number of "decorative things" such as pieces of pottery and jewellery, [redacted]

7.5 Conclusion regarding Current Mental Health Status

230. The evaluation of his current mental health status is complicated through AH's role as an alleged perpetrator AND an alleged victim. The experts (that is the POE on the one hand, and the previously instructed experts, Drs Porterfield and Cohen on the other) take differing views of his status as a victim and the issue of alleged torture. Parts of the previous reports do not in our view adequately balance the information, omitting to explain consideration of both sides of the matter. The various experts in-

structed in the case had access to different types of documentation. This has made it more difficult to evaluate these reports when all the experts are working from different source material.

231. The POE has also not received any information to enable comparison between the objective charges brought against AH with the subjectively reported burden. It is quite evident that the mental health of an accused can be related to the charges brought against him, for example intense feelings of guilt or facing the charges, realizing the dimension of the consequences of the acts. (This is a different issue from fitness to plead.) In response, the individual might recruit coping and survival strategies in order to deal with a significant level of incoherence, and so require measures to assure his well-being. In the case of AH, his sense of betrayal and despair could be the result of realizing the consequences of an alleged involvement in criminal acts, without being trauma-related. Likewise, they could be linked to facing the consequences but at the same time also linked to traumatic experiences prior to his arrest, as well as to individual and cultural factors, and arising from betrayal trauma discussed in this report. They could also be linked to traumatic experiences stemming from the alleged torture, without necessarily implying the presence or absence of a former, a current or a future mental disorder.

The POE had little information about the alleged torture and has seen no independent assessment of this issue. If AH was not subject to torture, the symptoms outlined above could either be a misinterpretation of his current mental status, or a reflection of problems he faces due to his role as an alleged perpetrator, or could be the consequence of certain experiences that are neither directly linked to his arrest and the court proceedings nor to the case itself, but manifest as a consequence of generally heightened levels of stress.

232. The limitation in available information also limits the conclusions the POE can draw as to the AH's current mental health status and implications for his fitness to plead, his ability to exercise fair trial rights, and measures to guarantee for his mental-health during or even after the court proceedings.

233. The POE can inform the Chamber about the range from worst to best case scenarios based on their professional evaluation but within a scope that is limited by various external factors.

234. In a very narrow sense, AH is not currently suffering from a diagnosable psychiatric condition. Specifically, he is not clinically depressed and he is not suffering from a Posttraumatic Stress Disorder.

235. However, he does complain of posttraumatic symptomatology in relation to the alleged torture, specifically nightmares, hyperarousal and intensification, particularly when exposed to reminders of his interrogation and torture. In a broader sense and under consideration of the CAPS wording" symbolizes or resembles an aspect of the trauma" it can proposed that due to AH's individual (personality) and cultural background, the sense of betrayal (betrayal trauma) and dehumanization was the more salient feature of the alleged torture than physical pain or other cues. Instead of experiencing intrusions in terms of, for example, seeing dead bodies or experiencing pain in his limbs, intrusions would be related to the most devastating and salient cues out of his perspective and thus also manifest in symptoms that are coherent with his subjective experiences and perspective. In this case, the symptoms he currently experiences would represent a manifestation of PTSD, which is coherent with the reports and notes of other experts, although the symptoms might fluctuate or change their nature of manifestation. RW and MK regard the issues referred to in this paragraph as of more significance than does GM.

236. AH is not currently receiving any psychiatric or psychological treatment. He has remote contact with an Imam on a regular basis which he finds helpful and reassuring.

8. FITNESS TO PLEAD AND ABILITY TO EXERCISE RIGHTS

8.1 Definitions and Criteria

237. The assessment used the Pritchard criteria as the basis for the evaluation of the accused's fitness to plead, also taking into account potential limitations that have been discussed in the scientific literature (for a review see for example Rogers et al., 2008). According to the Pritchard criteria, he accused will be unfit to plead if they are unable:

- to comprehend the course of proceedings on the trial, so as to make a proper defence; or
- to know that they might challenge any jurors to whom they may object; or
- to comprehend the evidence; or
- to give proper instructions to their legal representatives.

238. Fitness is not a static state but is a dynamic variable which may change according to circumstances. Our assessment necessarily represents AH's fitness at the present time. We have tried to predict circumstances in which he may become unfit or would struggle to be able to participate in the trial process and to suggest solutions to mitigate any distress.

8.2 Assessment of AH's Fitness to Plead

8.2.1 AH's understanding of the court proceedings and the case

239. AH said that he had been sitting in the Chamber since the start of the hearing. He said the trial had started a few weeks ago but could not remember the exact date. He has not had to give evidence himself so far.

240. He said that he tries to concentrate in Court and is able to follow most of what goes on, however sometimes he misses things that are said or does not fully understand what is being said……"there are a lot of words said every day".

241. AH was unwilling to discuss the crimes he has been charged with. He said that the information was available on the ICC website and he was not going to talk to us about them.

242. He was unwilling to state whether he was intending to plead guilty or not guilty, for similar reasons. However, he said that he felt distressed that he has been charged with such serious offences."It is a very bad situation….accused of such strange things , far from my family …being written about in the press, not having enough money to be able to bring my family over here …it is very hard for me".

243. He said that being accused of rape was a particularly terrible thing in his religion and a source of great shame. He said that he would prefer to be condemned to death than be accused of rape.

244. "In 2013 they eventually killed a man who raped a woman. According to the Koran, rape is a serious crime. A real muslim that would stick to the Koran would never rape a woman. Even ISIS would have killed one of them if they had raped a woman; they were most stringent. These are fabricated accusations. […] We have a deeply respectful culture. Koran calls for respect among people and for ethical behavior."

245. "Forced marriage is an action against humanity. Of course, every tribe has its own social set-up, which is not set up in a constitution. With the Tuareg, parents decide whom you have to marry; you have to respect this tradition.".

246. "Adultery is a crime that will be punished with flogging according to the Koran. This has to be committed in public. There are four levels of decision: Allah, the prophet, the judge, the emir". According to AH, the people believe in this type of justice. He felt confusion when he was told that his culture and

the Koran were a crime. "I respect international law and the Rome Statute. It is ratified by various countries, including Muslim countries. […] However, I did not know that Sharia and the Koran were a crime. The international law seems to be only made for countries like France".

247. Despite the stress and anxiety he experiences, AH said that he had been following and understanding most of what was being said in Court. He understands the purpose and roles of the different individuals in the court room.

248. He said that the Judge's role is to determine whether he is guilty or not and will "judge the person". He said that he understands the ICC to be a fair court and he himself believes that the Judge will come to a fair decision. He said that he doesn't have a problem with the judges.

249. He understands that the ICC has been entrusted by Mali to prosecute crimes against humanity, one of which he considers to be the torture he endured whilst in captivity.

250. He stated that he understands the case and the charges that are brought up against him very well. He could also remember all the things that have happened very well ("all important things are in my head").

251. Being asked if he feels able to engage in the case, AH responded, "I had a different lawyer in first place. I read the CV of my current lawyer and chose her, because I trust her. In the beginning I had no trust at all, even not to the lawyer. But eventually I managed to trust and believe. I don't have a problem with the judges and also not with the other parties involved. The only problem I have is that there are people sitting in court that participated or at least tolerated my ill-treatment. I consider all the OTP people the same".

252. AH said that, when he has to listen to the evidence in Court and the alleged crimes "it makes me feel anger, humiliation…..makes me feel I am losing hope". He feels that his religion "is being humiliated in front of me …they treat Sharia as a crime against humanity". He feels humiliated by having been accused of crimes he has not committed and humiliated by the torture he was subjected to.

253. He added "The Prosecutor cannot be the Judge at the same time". He raised his concern that the cultural perspective of the Tuareg would not be acknowledged. He repeatedly expressed that there are differences in the application of Sharia [redacted] and that Sharia has always been part of the Tuareg's culture. "Tuareg have also given rights to the women that other cultures didn't have". His family were raised with this perspective and never considered their upbringing as a crime.

254. AH said that he has been told he is able to ask for breaks when he wants and so far he has felt able to do this.

255. When asked what he thought the consequences would be of being found guilty, or not guilty, by the Court, AH said "I do not know what justice means here ….only God knows". He would not be drawn further into describing possible outcomes, however he admitted to feelings of anxiety and uncertainty about his future. "If I'm released, I will start a new page".

256. AH is able to instruct his solicitor. He has no cognitive or psychological impairment that might prevent him from instructing his solicitor. He likes and trusts his solicitor and his legal team. He has felt able to talk to his lawyer at length about the charges he faces. He understands and believes the advice his lawyer gives him and follows the advice, but is also able to express any disagreement or his own wishes if they do not accord with the advice he is given.

257. AH is able to understand the evidence. AH is of average or above average intelligence and is well educated. We were unable to directly test his ability to understand the evidence as we were not provided with the evidence against him. However, on the balance of probability and given the absence

of any specific psychological or cognitive impairments, we believe that AH is capable of understanding the evidence from an intellectual perspective. There are no specific barriers to understanding international law, the Rome Statute, the court proceedings, the different parties involved, and the role of his solicitor. Even AH confirmed that he had learned a lot about the legal system and that he is able to distinguish a judge from the prosecutor, which not all people from rural areas would feel able to.

258. AH is able to understand the course of the proceedings. All points that have been discussed for the previous point also account for the understanding of the course of the proceedings

259. However, the very fact of AH's understanding of the evidence and its origins (torture) has in itself become an obstacle to exercising his fair trial rights..

260. Being ask what reactions he would expect from others about the case, AH responded "I don't know how many will follow the case and I cannot speak for all of them. The Western media portrays it as if I'm a terrorist. My people know that I'm wrongfully accused and they know that I'm innocent. They will receive me warmly and many pray for me. They even started a facebook page that Al Hassan is not a criminal."

8.2.2 Experiences in court

261. AH said "To be honest it has been difficult…people who participated in torture are sitting in front of me". GM asked him to clarify this and he said that it is not his actual torturers in Court but representatives of his torturers. He went on to say that 3 or 4 people from the Prosecutor's office sit in the Court. He considers that they knew he was being tortured in the prison in Mali and yet failed to do anything about it so they are as responsible for his torture as the people who actually did it…."they knew and they did nothing …they were happy to keep me under torture".

262. AH said that "every time I go to Court it reminds me of my situation".

263. AH stated that 90% of the case is based on a forced confession.

264. He further stated that "In my cell, I have access to computer as well as translations. […] Arabic translations are made available to me, but it is too painful to read". AH reported that he doesn't want to read some of the Court documents and reports because he would fear reliving the torture.

265. AH said that he and his team had asked the Judge if members of the prosecution team could be removed from the Court but the Judge had refused. I asked AH how seeing them made him feel. He replied "I feel angry, I feel humiliated…I relive memories of what happened. I get a migraine. I feel like I don't want to see them". AH was also not able to say why the Judge refused his request.

266. Her also added "my mental health is most important for me. I fear that participating in the trial could kill me. Seeing the torturers in front of me is utmost stressful for me. I feel betrayed by the law. People without the insights won't know what is happening to me".

267. When being asked about his feeling about other witnesses for the prosecution giving testimony, he responded [redacted]

268. AH said that he deals with feelings of anxiety and stress in the courtroom, by lowering his chair so that he can avoid looking at the Prosecutors. He feels better if he can block them from view. "[…] I developed abilities to come up with solutions and make little adjustments […]. I have a big screen, which makes me feel comfortable. I can hide behind it. When the prosecutor talks, I can look away. Other people like my lawyer are there and I can turn to them. However, I would listen to what they are saying".

8.2.3 AH's self-assessment of his fitness to plead

269. MK and RWP discussed with AH the fitness-to-plead criteria, using the fitness-to-plead-questionnaire published in Brown et al., 2018 which provides a comprehensive and detailed list of the various levels of fitness-to-plead. MK and RWP provided an Arabic translation to AH. Going through this list revealed that AH understood all the various points.

270. Being asked about his perception of his fitness-to-plead according to these criteria, he responded, "I understand my case. Everything is clear to me. I changed my lawyer. I can fight for me. However, the presence of those in front of me who were present during my torture is difficult for me".

271. RWP summarized the position as follows. "I have thought about your case and what you have told us. I would summarize it that you are indeed fit to plead, because you are capable of understanding the charges and the case that is brought against you. You can defend yourself, as you have said, you have changed your lawyer, and you understand the differences between the different parties involved very well. But you also say that you cannot attend the court proceeding, because of the trauma reminders, for example the presence of the Prosecutors or the handcuffing and that this has to change. Is this an adequate summary?". AH confirmed this.

272. MK further asked for AH's response to the following: "Did anyone ever explain to you exactly what "fitness to plead" means? You seem to be well aware of all what is happening in the trial; but it is as an overwhelming sense of injustice dominating and overruling everything? You have an excellent understanding of your case and in that sense you appear to fit the criteria; it seems as if they are using a legal tool for a non-legal problem? "

273. AH explained that his understanding was slightly different from the narrow definition of the Prichard criteria and the items from the fitness-to-plead-questionnaire. For him the sense of injustice and dehumanization, together with his perception that the Court would not acknowledge his individual and cultural perspective nor formally acknowledge his torture, would form the basis of his fitness to plead. All of that would have to change if he were to consider himself fit to plead.

274. AH became deeply agitated and distressed when MK suggested that according to this specific narrow set of criteria (in fact according to his own evaluation of these criteria) he is fit to plead. However, his own understanding of what FTP meant was not congruent with these criteria.

- He protested, "I have to be in the court to exercise these rights! I have to be in court! I cannot be in court with the person who is part of my torture! I attend the court now because my father said to me that there are two people. I should not anger the judge and the doctor. I attend the court because the judge requires it and I do not wish to anger the judge"
- AH expressed anger towards the people who feels are responsible for his predicament. MK and RWP encouraged AH to describe what he meant by fitness to plead. He said, "to be at peace and calm in my mind. It is too hard for me to see the prosecutor at the court. I do what I can. I have found ways to cope because I have to, because the judge ordered it. I can listen to his (prosecutor's) voice but I cannot see him. I do not know how much longer this can go on." It felt as if he was alluding to the fact that he would just shut down and that matters would be taken out of his hands.

8.3 Exercising fair Trial rights:

275. AH repeatedly referred to the adverse effects of sitting in Court and being confronted by the Prosecution, as if they had without questioning accepted his torture and did not intervene. He feels threatened but also anger and despair.

276. AH said that he had made some adjustments to the situation in Court, that help him to cope with the situation. He recognises that “It is important for me to follow the Court proceedings and also instruct my lawyer”. Consequently, the absence of apparent signs of fear during the Court hearings is not an indicator for the actual threat AH experiences (“this is too painful”).

277. AH reported that some of the files are a potential trigger for him too. He finds it hard to read some of the Court documents from that are disclosed to him.

278. Besides his fear of being confronted with trauma reminders, this fear is also confused with the fear of retaliation (“you cannot complain to the person who is flogging you” / ”I cannot tell you, because you are not there at the detention centre (to watch over it)”.

279. AH repeatedly expressed his concerns that disclosing details about his adjustments would result in negative consequences for him. This fear is in line with his learned conviction to not let your enemy know anything personal about you.

280. Visual stimuli or being recorded in particular seem to serve as trauma triggers for him. He described that seeing the Prosecutor is a serious issue for him but that listening to him is possible. Consistent with this, he refused to turn on the camera during the remote interview.

281. The present case raises complex clinical and procedural questions regarding Mr Al-Hassan’s status as both a perpetrator and victim. He is both a witness to crime that he alleges was committed against him but he is also charged as a perpetrator. AH may be fit to plead to those aspects of his case that do not relate to torture evidence. However, if as the trial proceeds, the issue of torture and torture evidence becomes increasingly relevant to his defence or to the case of the OAP, AH may find himself in the invidious position of being cross examined by an individual who he claims was complicit in his torture.

282. The potential impact of testifying on the health and wellbeing of AH and his ability to give evidence effectively on his own behalf could be considerable. Having satisfied the Pritchard criteria with regards to fitness to plead he may become unfit to give evidence on his own behalf at the point of cross examination. AH’s psychological wellbeing and hence his fitness is liable to change particularly in circumstances in which he is placed under increasing stress. Cross examination may be a particularly high risk time for him, given his experiences of interrogation under torture and could trigger episodes of agitation, hyperarousal and paranoia. The manifestation of PTSD symptoms from an individual and cultural perspective must be considered in order to adequately capture AH’s mental health status and its consequences for the court proceedings..

283. AH’s experience of torture would constitute a condition’ that may impact his ability to give testimony and his defence would be unduly disadvantaged as a result. To defend himself AH must have the capacity to be cross examined which speaks to his ongoing ability to exercise his fair trial rights..

284. In order to be fit to plead, a Defendant must understand the charge(s), decide whether to plead guilty or not, exercise the right to challenge jurors, instruct solicitors or advocates, follow the course of proceedings and give evidence in his or her own defence. Without one or more of these abilities, a conventional trial should not proceed.

285. **According to the aforementioned narrow criteria AH is fit to plead.**

286. However, It would be remiss of the POE to not to report to the Chamber that the utility of the fitness to plead construct as currently formulated is not without controversy, both from a conceptual and a procedural point of view. The ability of an individual to participate in courtroom proceedings is assessed by clinicians using legal ‘fitness to plead’ criteria. Findings of ‘unfitness’ are so rare that there is considerable professional unease concerning the utility of the current subjective assessment process. As

a result, mentally disordered defendants may be subjected unfairly to criminal trials. One must also consider cultural and other variables that criteria as currently applied in a modern western judicial system

287. We were clearly not able to fully assess the evidential basis for the charges and the statement he gave to the OTP in Mali, as we were not provided with details of the charges he faces,. AH was unwilling to discuss these with us in detail. He understands that he is charged with crimes against humanity including specifically rape. He states he is innocent of all charges. He understands that a plea of guilty would imply that he accepted that he had committed these offences. MK and RWP went through the FTP criteria which had been translated into Arabic. AH reviewed the criteria and understood the concepts. MK and RWP pointed out all the effective actions he has taken in explaining and managing his case, all of which he agreed to. However, it became apparent to MK and RWP that AH, having understood and read the criteria, still appeared to be confused as to what Fitness to Plead actually meant.

8.4 Significant obstacles in the course of the proceedings.

288. AH's self-report was coherent with his clinical appearance and the reports by other experts and mental health professionals. It can be assumed that AH experiences distress in relation to reminders of the alleged torture, such as the handcuffing. It is also reasonable to conclude that the general sense of betrayal and dehumanization is triggered by certain cues in the courtroom, such as the presence of the prosecutor.

289. Even if the clinical picture of AH might not meet the narrow clinical picture of a clinically significant PTSD disorder as referenced in the West, it nevertheless reflects marked suffering that is coherent with AH's upbringing, his individual and transcultural background, and his subjective processing of the trial and the Court proceedings. As research clearly demonstrates (Elbert, Moran, & Schauer, 2017), although DSM 5 tries to create the impression of an objective trauma concept, namely that the subjective processing of environmental cues is no longer considered as a necessary trauma criterion, traumatization primarily depends on the individual's subjective processing of potential trauma cues. Thus, the sense of betrayal and dehumanization is real to AH, irrespective of any objective involvement of the Prosecutor in the alleged torture.

290. Taking this as well as a wider interpretation of the trauma criteria into account, it can be concluded that his participation in the court proceedings is a significant burden to AH, and is also a significant risk factor for a deterioration of his mental health status or a collapse of his defence and survival strategies; although current adjustments still allow him to keep the symptom load on a subclinical level.

291. Consequently, AH's current state of mind might interfere with his abilities to exercise his fair trial rights (see below), although he is able to understand and follow the court proceedings on an intellectual level. It also has to be noted that care is needed with the validity of the application of narrow fitness-to-plead criteria; they are susceptible to neglecting the mental health burden in a specific case under consideration of the individual's biographical and cultural make-up. An independent investigation of the alleged torture would presumably clarify AH's status as a victim from an objective perspective, help to restore his feeling of justice in the present trial, and take away a significant source of insecurity for the evaluation of his mental health status.

292. **AH might face impairments in his ability to give evidence in his own defence.** On an intellectual level, AH is clearly able to give evidence and engage in his own defence, even in the situation of a more complex cross-examination. However, the re-enactment of the alleged torture during court pro

ceedings, especially triggered by the presence of the Prosecutor or a cross-examination that might resemble interrogations he had faced, would likely cause strong negative feelings, an impairment of necessary cognitive functions, and a loss of his contact to the here and now. This wasevident during the interviews. This would lead to a negative impairment of his ability to give evidence in his own defence and consequently has to be acknowledged, even if a very conservative and narrow definition of fitness-to-plead might overlook this crucial point.

293. **AH might face significant impairments to engage in exercising his fair trial rights.** If AH faces the aforementioned issues during the court proceedings, he is no longer able to exercise his fair trial rights. If some evidence (even less than the 90% suggested by AH) was obtained under forced confession, every confrontation with the evidence presented in Court would serve as a trauma trigger. The Court proceedings per se would then provide a high risk for serious deterioration of AH's mental health, as they would indeed objectively confirm his suspicion of not being respected and treated as a human being.

8.5 Conclusion:

294. AH has the intellectual capacity to plead his case. We found no current impairment in his ability to exercise fair trial rights. However, this may be compromised if he continues to believe that the basis that case against him is in part built on evidence extracted under torture.

295. If an independent investigation dismissed the accusation of torture, no trauma-related impairments would be expected. In this case, overwhelming negative emotions and deterioriation of AH's mental state would be expected that in turn can also affect his fitness to plead and his ability to exercise his fair trial rights, could still occur as a consequence of being confronted with the consequences of alleged criminal acts. This would constantly have to be evaluated.

9. RECOMMENDATIONS TO MITIGATE DISTRESS AND MAINTAIN FITNESS IN RELATION TO THE ONGOING COURT PROCEEDINGS

296. 'The POE recommend that the Chamber take every reasonable step to mitigate Mr Al-Hassan's distress and maintain his fitness in relation to the ongoing court proceedings. It includes the implementation of measures that facilitate his attendance at the court when he is needed and facilitate his participation in the proceedings as they continue.

297. A trauma-informed approach has as its primary goals accurate identification of trauma and related symptoms. It involves an awareness of the impact of trauma, minimizing retraumatization, and a fundamental "do no harm" approach that is sensitive to how institutions may inadvertently reenact traumatic dynamics (Harris & Fallot, 2001; Hodes, 2006).

298. Prisons and courtrooms are challenging settings for trauma-informed care. Yet, if trauma-informed principles are introduced, all staff can play a major role in minimizing triggers that may repeat aspects of past abuse (Blanch, 2003; CMHS, 2005).

9.1 The use of restraints:

299. AH has consistently identified that the use of a certain type of handcuff triggers traumatic memories and associations. AH stated there is different type of handcuff which when used is less triggering for him. Given the number of times that AH is cuffed and uncuffed during the proceedings and on his

journey to and from the prison utilizing a restraint that is less triggering is advisable and hence recommended by the POE in AH's case.

300. The POE are not experts as to the procedural rules regarding the use of restaints. However, the POE recommends avoiding the use of restraints in low risk settings or whenever possible. The POE has experience that when, the use of the restraints and time spent in restraints is minimized, it has a dramatic impact on the psychological well-being of the detained person. The POE are confident that it would have a postive impact on AH given the traumatic association with restraints used during the torture he has reported. AH should be included as part of the review and a detailed explanation sought as to the difficulties he is experiencing and a remedy agreed.

9.2 Torture

301. The POE is acutely aware that AH has made an allegation that the Office of the Prosecutor was complicit in his torture. Expert reports prepared by the defense and prosecution witnesses have reached opposite findings with regards to AH's allegation of torture. AH has made it clear that he has questions as to what happened. AH referred to the possibility that the OTP might explain what happened and perhaps offer him an apology.

302. The POE assumes that the Chamber and the ICC will wish to investigate Mr Al Hassan's claims of torture and of CIDT during his interrogation in Mali. We have no reason not to believe Mr Al Hassan's account of this, which has been fairly consistent over time, however we do not consider that it falls within our expertise, as medical experts to comment further on the allegations, or steps to deal with this.

9.3 Engagement with OTP

303. AH has the intellectual capacity to plead his case. We found no current impairment in his ability to exercise fair trial rights. However, Mr. Al-Hassan's fixation on the OTP's alleged complicity in his torture could result in severe decompensation if cross examined by the prosecutor on matters related to his torture or on those aspects of his statement that he alleges were extracted under torture.

304. The panel recommends that a periodic review of the impact of ongoing proceedings on AH's mental state be implemented. It would include an evaluation of his requirement to the attend the hearing in person or be allowed to engage remotely if a durable solution cannot be found to address his complaint against the OTP It is to be expected that Mr Al Hassan's stress levels and associated distress will increase when he himself is required to give evidence and when the coping strategies he has adopted so far in coping with presence of the prosecutor may prove ineffective.

9.4 Coping Strategies

305. During the assessment conducted with MK and RWP time was spent exploring AK's understanding of Islam. Passages from the Koran were quoted to facilitate a better understanding of the role that Islam plays in his life but also as a means of exploring the allegation made against him from an Islamic perspective.

306. AH's practice of Islam enables him regain a sense of control though an active giving up of control to Allah. His belief in an omniscient deity to which he can surrender his will has become a primary source of comfort when he is feeling overwhelmed. AH has developed a positive religious coping strategy and as such it has been of benefit, enabling him to cope with the complexities and trauma

associated with his trial. A study published in 2017 (Berzengi et al., 2017) explored trauma related appraisals and religious coping in the post traumatic adjustment of Muslim trauma survivors. It was found that,

307. " First… negative religious coping differentiated between trauma survivors with and without PTSD (Study 1) and was significantly correlated with PTSD symptoms (Study 2). Second, negative Islamic appraisals were significantly associated with greater PTSD symptoms whereas positive Islamic appraisals were significantly associated with fewer PTSD symptoms (Study 2). Third, negative trauma-related appraisals correlated significantly with, and uniquely predicted, PTSD symptom…. Clinically, our findings suggest that addressing PTSD symptoms in Muslim trauma survivors may require clinicians to consider the impact of trauma on the survivor's religious appraisals and relationship with God."

308. The study supports the role that AK's practice of Islam plays in helping him to mediate traumatic states. The use of Western trauma focused techniques must at all times take into consideration the impact it would have on his primary method of coping. If for example AK began to decompensate it may take the form of being possessed by a Jinn. It would be important to coordinate with his Iman in finding a suitable religious practitioner who could treat him in accordance with his beliefs. We raise this because there is a history of Jinn possession within his family and it was treated in accordance with his beliefs.

309. "according to Islamic belief, jinn are real creatures that form a world other than that of mankind, capable of causing physical and mental harm to human beings. An example of such harm is possession….possession is the belief that an individual has been entered by an alien spirit or other para-human force, which then controls the person or alters that person's actions and identity. To the observer, this would be manifested as an altered state of consciousness jinn live alongside other creatures but form a world other than that of mankind. Though they see us they cannot be seen."[3]

310. The POE has experience in managing such treatment and has found it to be highly effective when coordinated with Western psychology. However, the failure to integrate these perspectives would result in causing additional harm and suffering to a person like AK. [redacted] The point that the POE wish to make is that the interaction between cultural beliefs and conventional medicine is complex. [redacted] Any underlying mental disorder should be treated by usual psychiatric methods, but the clinician should respect the cultural issues and avoid directly contradicting statements from the patient or relatives about the reality of possession.

311. The trial is likely to continue on for several years. There is a risk based on the factors set out in this report that AH will begin to decompensate at some point during the trial. Decompensation may manifest itself in the form of a possession state or a more recognizable form of mental illness. The management of mental health issues that may arise require a flexible approach that take into consideration and respect his traditions and belief system.

[3] J R Soc Med. 2005 Aug; 98(8): 351–353

312. Another example of where an understanding of cross cultural issues relates to the following. Earlier in this report (7.1.6) there is a mention of suicidal ideation. AH stated that "If suicide was accepted in Islam then I would have killed myself long ago" Instead, he "would take everything as it comes; it is God's fate". The prophetic traditions explicitly and in unequivocal terms not only proscribe suicide but condemn the perpetrator of such an act to eternal retribution in the form of incessant repetitions of the act and the anguish of the mode of suicide. The mere contemplation of suicide (wishing for death), if understood within a cultural frame, is in itself prohibited and would be an indicator in AH's case of acute mental anguish. It is a violation of the Creator's (Allah) will who has absolute power over human life. Violating this understanding entails not only committing a sin but also eternal damnation. Therefore reference to suicidal ideation has a completely different meaning for him than it does for a non-believer.

9.5 Trauma-specific interventions:

313. The POE recommends a review of the treatment options available to AH both at the detention facility and if required externally. Western mental health options should be coordinated with his Iman as to ensure both approaches are congruent and complementary with one another.
314. There is recognition that staff and inmate relationships are the day-to-day fabric of both trauma recovery and of re-traumatization. AH has established positive coping strategies and relationships with the prison guards. His continued positive engagement with the detention facility guards should be encouraged.
315. Numerous references have been made to the hardship experienced by AH as a result of him being separated from his family. It is an exhausting, resource intensive process for a family member to make one visit at a prison. Maintaining a relationship with his family has become an increasingly complex proposition and a such is a chronic stressor. A review of the provisions for family contact should be made between him and his family to see if there are other avenues in which family contact can be facilitated. The pandemic has clearly had a major impact on prisoners and their families around the world. Reviewing the access and communication strategy with the aim of finding a durable solution for Mr Al Hassan and his family is warranted.
316. The panel would also like to express its concerns as to the safety and wellbeing AH's family given the nature of the case and the various actors involved who may have a different perspective on his presence in the The Hague. The POE raised this point because of its experience in this field in which failure to review a situation resulted in the loss of life.

9.6 Other measures

317. There is recognition that staff and inmate relationships are the day-to-day fabric of both trauma recovery and of re-traumatization. Mr Al-Hassan has established positive coping strategies and relationships with the prison guards. His continued positive engagement with the detention facility guards should be encouraged.

318. Measures that may help to mitigate distress and maintain fitness during the trial include considering the positioning of Mr Al Hassan in the Chamber, particularly when giving evidence, so he is not having to directly look at the prosecutors; the introduction of frequent breaks and providing Mr Al Hassan with additional support (this could be medical or religious e.g. through the Iman) in between appearances. Additional assessments by medical staff may be helpful to consider the need for medication, if he becomes particularly distressed, for example night sedation or anxiolytics.

319. We are unable to say much more about this as we have not been provided with clinical records covering the period when he has been present in Court. Ideally we would have wished to see whether there has been any objective evidence of acute distress or decompensation associated with Court hearings.

320. AH has stated that, whilst he feels distressed in Court, he is able to recover in the intervals between hearings, i.e. when the Chamber does not sit. Therefore any disturbance would appear to be fairly short-lived and self-limiting.

10. SUMMARY OF OPINION, AND RECOMMENDATIONS

321. AH is Fit to Plead. He is able to comprehend the evidence; follow the course of the trial and instruct his lawyers. However, AH's psychological wellbeing and hence his fitness is liable to change particularly in circumstances in which he is placed under increasing stress. Cross-examination may be a particularly high risk time for him, given his experiences of interrogation under torture and could trigger episodes of agitation, hyperarousal and paranoia. The manifestation of PTSD symptoms from an individual and cultural perspective must be considered in order to adequately capture AH's mental health status and its consequences for the court proceedings.

322. AH is not currently suffering from Posttraumatic Stress Disorder, Depressive Disorder, or any other recognised psychiatric condition. However, it is important to remember that the diagnostic concept of Posttraumatic Stress Disorder (although advancing our understanding of trauma) does not entirely describe the full range of serious psychological effects that can result from different forms of traumatic experience and in people from different cultural backgrounds. Furthermore, AH was exposed to multiple adverse childhood experiences that suggest a more complex trauma picture than would be typically associated with a PTSD diagnosis.

323. AH does experience symptoms of anxiety and distress associated with memories and reminders of interrogation and the alleged torture, which if having occurred as reported has affected his ability to trust and have confidence in the system and authority figures, who are associated in his mind with his torturers, and which have to be understood in terms of the specific living and environmental conditions AH faces.

324. From a broader transcultural perspective that also acknowledges potential coping and survival strategies of AH, the symptom profile of AH could very well support the presence of a sub clinicalform of PTSD. Symptoms of anxiety are particularly likely to come to the fore when he is placed in situations that remind him of aspects of his imprisonment and interrogation, such as being handcuffed, or being (cross) examined in Court.

325. A protective factor prior to the Covid19 lockdown were visits from his family, as well as a structured programme of education and activities operating in the detention centre. The loss of contact with his family and of meaningful activities has impacted negatively on his general wellbeing and sense of hope. AH's religion is a further protective factor, reading the Koran, praying and having regular contacts with the Iman is necessary for his psychological wellbeing and for sustaining hope. AH also derives comfort and relief from talking to his fellow detainees and staff. This positive effect however has to be critically evaluated in terms of potential self-suggestive or other survival strategies AH might apply to cope with his current life. The self-report of AH bears the risk that its truthfulness is selectively interpreted, depending on the perspective of the person that is using his self-report ("I'm innocent" versus "I feel good").

326. It would clearly be desirable if AH could be allowed to have some direct contact with family members as soon as this can be safely facilitated, as well as being allowed to commence the activities that he formerly participated in and enjoyed, [redacted], cooking and exercising.

327. We have no specific recommendation for treatment at present although we would advise that he has regular assessments of his mental state and that any deterioration is managed appropriately.

328. AH is not currently requesting and he does not require any psychiatric or psychological treatment. He is not being prescribed any psychotropic medication. Measures that may help to mitigate distress and maintain fitness during the trial include: minimizing the use of handcuffs; considering the positioning of AH in the Chamber, particularly when giving evidence, so he is not having to directly look at the prosecutors; the introduction of frequent breaks and providing AH with additional support (this could

be medical or religious e.g. through the Iman) in between appearances. Additional assessments by medical staff may be helpful to consider the need for medication, if he becomes particularly distressed, for example night sedation or anxiolytics.

11. DECLARATION UNDER CRIMINAL PROCEDURE RULES PART 19.4(j) and (k)

The POE declares that:

1. We understand that our duty is to help the court to achieve the overriding objective by giving independent assistance by way of objective, unbiased opinion on matters within my expertise, both in preparing reports and giving oral evidence. We understand that this duty overrides any obligation to the party by whom I am engaged or the person who has paid or is liable to pay me. We confirm that we have complied with and will continue to comply with that duty.
2. We confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case.
3. We know of no conflict of interest of any kind.
4. We do not consider that any interest which we have disclosed affects my suitability as an expert witness on any issues on which I have given evidence.
5. We will advise the party by whom we are instructed if, between the date of my report and the trial, there is any change in circumstances which affect the answers we have given to points 3 and 4 above.
6. We have shown the sources of all information I have used.
7. We have exercised reasonable care and skill in order to be accurate and complete in preparing this report.
8. We have endeavoured to include in my report those matters, of which we have knowledge or of which we have been made aware, that might adversely affect the validity of my opinion. We have clearly stated any qualifications to my opinion.
9. We have not, without forming an independent view, included or excluded anything which has been suggested to me by others including the instructing party.
10. We will notify those instructing us immediately and confirm in writing if for any reason our existing report requires any correction or qualification.
11. We confirm that we have acted in accordance with the code of practice or conduct for experts of our disciplines.

Statement of Truth: We confirm that the contents of this report are true to the best of our knowledge and belief and we make this report knowing that, if it is tendered in evidence we would be liable to prosecution if we have wilfully stated anything which we know to be false or that we do not believe to be true.

Sign here date 09. December 2020

Dr Mike Korzinski

sign here date 09. December 2020

Professor Gillian Mezey MBBS FRCPsych

Sign here date 09. December 2020

Professor Roland Weierstall

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APPENDIX 1

Curriculum Vitae Gillian Mezey

I currently hold the post of Emeritus Professor of Forensic Psychiatry at St Georges University of London and Honorary Consultant in forensic psychiatry at St Georges and South West London NHS Mental Health Trust, where I previously held the post of Consultant forensic psychiatrist between 1991 and March 2017. I have worked as a clinical academic in forensic psychiatry for the past 35 years. I have specific expertise in the assessment and treatment of mentally disordered offenders and in risk assessment of individuals with mental health problems who have committed serious crimes. As a clinical academic within the Population and Research Institute at St Georges University, I have a range of teaching and research responsibilities. I have over 100 publications related to my work in forensic psychiatry; specifically on Psychological Trauma and its relationship to the criminal offending, in both the offender and the victim. I was the mental health expert on two separate E.C. Missions in 1991 and 1993, to investigate the abuse of Muslim women and to advise on the establishment of a psychosocial programme for refugees and displaced persons during the conflict in the former Yugoslavia. I have extensive medico legal experience and experience as an expert witness, in criminal civil and family courts, both within the UK and in relation to a number of other jurisdictions. I am also a specialist member of the England and Wales National Parole Board.

PUBLICATIONS (recent and/or relevant to case)

BOOKS: **Male Victims of Sexual Assault.** Mezey G C & King MB (eds), Oxford University Press, First edition 1992; 2nd Edition, 2000**; Psychological Trauma: A Developmental Approach**. Black D, Harris-Hendricks J, Mezey, G C & Newman M (eds), Gaskell Press: London, 1996; **Violence Against Women.** Bewley S, Friend J, Mezey G (eds), RCOG Press: London, 1997

BOOK CHAPTERS: Mezey G C, **Treatment for Male Victims of Rape**, in Male Victims of Sexual Assault, Mezey G C & King MB (eds), Oxford University Press: Oxford, 1992; Mezey G C & Kaplan T, **Psychological Responses to Interpersonal Violence, in Psychological Trauma: A Developmental Approac**h, Black D, Harris-Hendricks J, Mezey G C & Newman M (eds), Gaskell Press: London, 1996; Mezey G C and Robbins I. **The Impact of Criminal Victimisation** . In ed. Gelder Oxford Textbook of Psychiatry, OUP. 2000; Mezey G C. **The Effects of Assault on Healthcare Professionals**. In ed. Shepherd J. "Violence in Healthcare". Oxford University Press 2000; Mezey G C and King M B. **Treatment of Male Victims of Sexual Assault.** In Male Victims of Sexual Assault. Mezey G C and King M B (eds.) Oxford University Press: Oxford 2000; Mezey, G. & Thachil, A**. Sexual Violence and Refugees**. In Bhugra, D., Craig, T. and Bhui, K. (eds). Mental Health of Refugees and Asylum Seekers. Gaskell Press. RCPsych. 2010.

Curriculum Vitae Mike Korzinsky

- Independent Psychologist and Psychosocial Expert
- Clinician, trainer and expert witness
- Specialises in work with the victims of complex trauma, including victims of torture and gender-based violence (especially in conflict-affected areas), trafficking, slavery, terrorism and related offences.
- Works with multi-disciplinary professional teams
- Expert in cross-cultural psychology
- Pushes the boundary of how seriously abuse and exploitation are regarded, including in high profile cases
- Co-founder and previously Clinical Director of the Helen Bamber Foundation
- US / UK dual national
- Based in London, works internationally

For more than two decades I have been providing care and treatment to people who have been traumatized by torture, trafficking, conflict and other forms of organized violence. My experience has developed my views (both theoretically and applied clinically) about the nature and impact of torture.

As a consultant I work internationally, both clinically and advising, lecturing, training, and leading workshops and seminars. I have extensive experience (professionally and academically) working at the cutting edge of human rights, advancing our understanding of severe and complex trauma, treating and supporting victims from different countries, faiths and cultures, and advising other professionals. I have worked with those supporting victims: lawyers, government, professionals in the criminal justice sector, therapists and other health professionals. Wherever possible, I work with (and encourage those I advise to work with) colleagues from other disciplines. Supporting victims of egregious violence (physical, emotional, social and psychological) benefits from a multi-disciplinary approach.

I have a particular interest in evidence from neuroimaging studies that has suggested areas of the brain that may be damaged by psychological trauma. The clinical implications of these studies challenge the basis of traditional therapeutic approaches. I have researched the relationship between Post Traumatic Stress Disorder, dissociation, somatization, and affect dysregulation and have explored a range of rehabilitation approaches to address these. I have published on the subjects of human exploitation and torture and have assisted other organizations and trauma services worldwide to develop their approaches to the treatment of complex trauma. I specialize in the use of neuro-feedback techniques and other somatic based techniques; survivors can often more readily find expression in physical activity, or that physical activity supports verbal expression.

I continue to explore support for survivors. I am interested in what best enables a victim to cope with the strains of giving testimony, and to give the best testimony to enable a successful prosecution, and in supporting and encouraging each survivor to identify activities which for him are both practical and therapeutic. (Examples of this work are given below.) Every survivor has his own context, and if this includes a family (who will also have been affected deeply by his experience) I work with them.

I hold a PhD in Psychology and Psychotherapy based on original research into new methods of treatment conducted at the Medical Foundation for the Care of Victims of Torture (now Freedom from Torture) from 1990 until 1996. As a senior clinician at the Medical Foundation I was directly involved in the clinical assessment of over 1,200 torture survivors whose social wellbeing and family life had been profoundly impacted by torture and who were presenting with a wide range of psychological and physical injuries. I was directly responsible for the clinical care of over 500 individuals suffering from Post Traumatic Stress Disorder, Enduring Personality Disorder after Catastrophic Life Experiences and other DSM V and ICD 11 diagnoses typically associated with experiences of massive psychological trauma. I also trained and supervised clinicians within the Medical Foundation and at other UK and international institutions.

In 2004 I co-founded the Helen Bamber Foundation (HBF) with Helen Bamber OBE, founder of the Medical Foundation. HBF is a UK-based human rights charity which provides medical consultation, therapeutic care, human rights advocacy and practical support to survivors of gross human rights violations, torture, political oppression, trafficking and other forms of extreme cruelty, well respected by government bodies, the police and other voluntary and statutory agencies for its work in the area of complex trauma caused by acts of interpersonal violence. At HBF I undertook pioneering work in the clinical treatment of victims of human exploitation. I was the first to identify the clinical links between certain forms of human exploitation and torture. The OSCE funded a publication on Trafficking on Human Beings Amounting to Torture based on this work. I developed the rehabilitation and treatment model used at the Foundation as its Clinical Director from 2005 to 2012. I supervised the clinical staff and worked with hundreds of survivors of all ages from different countries, cultures, and religious backgrounds, providing them with treatment and support.

My work has also brought me to the United States where I was asked to provide technical assistance to the administration of former New York City Mayor Michael R. Bloomberg in creating international multi-media campaigns and training programs for NYC's 300,000 employees including public school teachers in the area of human trafficking. I was a founder member of Mayor Bloomberg's working party on human exploitation and was involved in the exploratory stages of a pilot project at Bellevue Hospital (New York City's oldest and largest public hospital) to develop a public health response to the problem of human exploitation. The project is now up and running, providing psychological medical and social care to victims of human exploitation.

I have acted as a consultant to the Police both in the UK and abroad in cases involving the care and treatment of vulnerable witnesses and other severely traumatized victims of crime. As a psychosocial expert in a dedicated team within the Stabilisation Unit at the UK Foreign and Commonwealth Office, I have worked in Bosnia Herzogovina together with legal experts providing training to prosecutors and judges on the international legal framework used for prosecuting cases of sexual violence and the trauma experienced by the witnesses. I also conducted separate training for the Witness Support Team based in Sarajevo, Bosnia and assessed the work of five NGOs providing frontline services to victims who have suffered torture and war related sexual violence. Following this I co-authored the module on Wartime Sexual Violence in a training manual commissioned by the Organisation for Security and Co-operation in Europe. I continue to work in BiH, training witness protection officers (police) and a witness support team to whom I provide supervision.

Curriculum Vitae Roland Weierstall-Pust

Roland Weierstall-Pust is W3-Full-Professor for Clinical-Psychology and Psychotherapy, state-licensed psychotherapist, state-licensed supervisor for psychotherapy, licensed trainer for advanced psychotraumatology, forensic expert-witness and has solid and profound experience in the practical and scientific work with victims and perpetrators from post-conflict communities. He has worked with samples such as Ugandan child soldiers, German WW2-veterans, Rwandan genocide perpetrators, South African gang-members, the Burundian Army, Columbian paramilitary and former rebels, former rebels from the DRC, forensic inpatients, or Syrian refugees in Lebanon. He has lead therapeutic as well as research projects in different post-conflict zones, including training and supervision of local counselors. In 2008, Professor Weierstall-Pust together with Professor Elbert was the first to systematically investigate the processing of violence cues in former combatants, informing the construct of Appetitive Aggression.

EDUCATIONAL BACKGROUND:

2020 Licensed Supervisor for Psychotherapy, Hamburg & Hessen, Germany

2019 Certificate in Advanced Psychotraumatology (*Spezielle Psychotraumatherapie* - DeGPT; German-speaking Society for Psychotraumatology*)*

2015 – prs. Advanced training in Schema-therapy (ISST; International Society of Schema Therapy).

2014 Approbation as Psychological Psychotherapist (CBT; 4.200 hours training), state-licensed, Germany

2013 Habilitation (qualification for tenured positions), including venia legendi in psychology, University of Konstanz, Konstanz, Germany

2009 PhD (Dr. rer. nat.) at the Department of Biological Psychology and Clinical Psychology, Heinrich-Heine-University, Düsseldorf, Germany

2006 "Diplom-Psychologe" (equivalent to Master's Degree, Psychology), "sehr gut" grade (equivalent to A grade), Heinrich-Heine-University, Düsseldorf, Germany

CONTRIBUTION TO SCIENCE:

Professor Weierstall-Pust has published over 60 articles in peer-reviewed scientific journals, in particular in the field of psychotraumatology and human aggression plus book chapters and numerous talks.

FIVE RECENT PUBLICATIONS:

1. Hemmings, SMJ, Xulu, K., Sommer, J., Hinsberger, M., Malarn-Muller, S., Tromp, G., Elbert, T., Weierstall, R., Seedat, S. (2018) A variant in SLC6A4 is associated with appetitive aggression in a cohort of young South African Black males exposed to continuous threat. Scientific reports, (IF = 4.847).
2. Moran, J. K., Dietrich, D. R., Elbert, T., Pause, B. M., Kübler, L., & Weierstall, R. (2015) The Scent of Blood: A Driver of Human Behavior?, PloS one (IF = 3.534), 10(9), e0137777.
3. Moran, J., Elbert, T., & Weierstall, R. (2014) Differences in brain circuitry for appetitive and reactive aggression as revealed by realistic auditory scripts Frontiers in behavioral Neuroscience (IF = 3.392).
4. Weierstall, R., Huth, S., Knecht, J., Nandi, C. & Elbert, T. Attraction to violence as a resilience factor against trauma disorders: Appetitive aggression and PTSD in German World War II veterans. PLoS ONE (IF = 3.534), 7(12): e50891. doi:10.1371/journal.pone.0050891.
5. Weierstall, R., & Elbert, T. (2011) The Appetitive Aggression Scale. European Journal of Psychotraumatology (IF = 2.325). 2, 8430 - DOI: 10.3402/ejpt.v2i0.8430.

INTERNATIONAL COLLABORATIONS: Professor Weierstall-Pust has collaborated extensively with other research groups (selection): Ainamani, Herbert E., Dr., Bishop Stuart University, Uganda; Bambonje, Manassé, Prof. Dr., Dept. of Psychology, Université Lumière de Bujubura, Burundi ; Godfrey, Mutesa, Leon, Professor. Dr. College of Medicine and Health Sciences, University of Rwanda, Rwanda; Seedat, Soraya, Professor Dr., Stellenbosch University, ZA. Acting Executive Head of the Department of Psychiatry, South African Research Chair in Posttraumatic Stress Disorder.

APPENDIX 2

List of documents disclosed to the POE.

[redacted]

[redacted]