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Date: **24 August 2022**

TRIAL CHAMBER VI

Before: Judge Miatta Maria Samba, Presiding Judge
Judge María del Socorro Flores Liera
Judge Sergio Gerardo Ugalde Godínez

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Public
with Confidential Annexes A, B and Public Annex C

Prosecution's request to appoint an expert

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. INTRODUCTION

1. Pursuant to the Chamber's decision on the joint instruction of an expert on the *arbatachar* method ("Decision"),¹ the Prosecution respectfully, requests the Chamber to appoint and instruct an expert on the physiological effects of the restraining method known as "*arbatachar*". As the Parties did not come to an agreement within the time limit set by the Chamber on jointly instructing such an expert, the Prosecution proposes two experts for consideration.

II. CONFIDENTIALITY

2. Pursuant to regulation 23bis(1) of the Regulations of the Court, the Prosecution files this submission public with confidential annexes. The Annexes A and B, appended to this filing, are classified as confidential as they relate to information regarding *inter partes* communications and confidential information that should not be released to the public.

III. SUBMISSIONS

A. The Parties did not come to an agreement on jointly instructing an expert

3. Following the Chamber's Decision the Prosecution reviewed the experts with relevant expertise listed on the List of Experts before the ICC ("List of Experts")² in line with regulation 44 of the Regulations of the Court ("Regulations"). The outcome of this review, which was conducted with the assistance of the Forensic Services Section ("FSS") of the Office of the Prosecutor, is provided in Annex A.

4. The overview in Annex A together with links to biographies and Curriculum Vitae ("CV") of certain experts available to the Prosecution were provided to the

¹ ICC-01/14-01/21-439.

² List of Experts before the ICC as of 16 June 2021, see <https://www.icc-cpi.int/get-involved/experts>.

Defence on 3 and 4 August 2022 (Annex B).³ In its communication, the Prosecution proposed two experts in particular among those reviewed from the List of Experts for consideration, it also identified several other experts for potential instruction because they were sufficiently qualified for this particular type of expertise.

5. On 19 August 2022, the Defence stated it had considered the two proposed candidates but declined to a joint instruction of an expert. The Defence explained in summary that the question of *arbatachar* is “extremely complicated” and cannot be discussed with the Prosecution without revealing the Defence’s strategy on certain issues and stipulating to an expert’s qualifications. Further, the Defence noted that the two experts chosen by the Prosecution from Annex A do not have the necessary qualification or experience with *arbatachar* and the cultural context of West Africa specifically.⁴ The complete communication by the Parties and explanation of the Defence can be found in the email chain between the parties, set out in Annex B.

B. The Prosecution proposes two experts for consideration by the Chamber

6. As set out in Annex A, the Prosecution has reviewed the potential candidates from the List of Experts with a specific view to the requisite qualifications in the field of forensic medicine paired with a focus on torture victims. From those on this list who fulfil these criteria, the Prosecution proposes Dr. Sandra Crosby MD.

7. Dr. Crosby is Professor of Medicine at Boston University, specializing in internal medicine. She is also a faculty member of the Health Law, Bioethics, and Human Rights department at Boston University School of Public Health. She is also serving as the director of medical care at the Boston Center for Refugee Health and Human Rights and has examined over 300 torture victims at the Center.⁵ Professor Crosby was

³ Prosecution e-mail of 3 August 2022, 16:44 hrs and 4 August 2022, 19:19 hrs.

⁴ Defence e-mail of 19 August 2022, 16:22 hrs.

⁵ <https://www.bu.edu/sph/profile/sondra-crosby> (last visited 22 August 2022).

contacted on 22 August 2022 and has indicated her general willingness and availability if instructed.

8. Further, in the search for potential experts, it has come to the Prosecution's attention that during the trial before the *Chambre Africaine Extraordinaire d'Assises* against the former ruler of Chad Hissein Habré, Dr. Hélène Jaffé was accepted as an expert and testified before it on the restraint method of *arbatachar*. The relevant extract of this judgement reads as follows:

264. Depuis 1981, Hélène Jaffé travaillait avec des victimes de torture et faisait partie d'un groupe international de pionniers dans ce domaine ⁵⁵¹. Elle a d'abord soigné des victimes de torture pour Amnesty International à Londres⁵⁵², puis en Guinée avec Médecin sans Frontières ⁵⁵³. C'est alors qu'elle a créé avec des collègues l'AVRE, une association dédiée aux victimes de torture. Alors que le mandat de l'AVRE était initialement destiné à soigner principalement les victimes de torture en exil à Paris, son mandat a été étendu pour y inclure des missions à l'étranger ⁵⁵⁴. Toutefois, le terme « Exil » n'a pas été enlevé du nom de l'Association « parce que ça faisait AVRE, que c'est un mot gentil [...] un mot plutôt accueillant » ⁵⁵⁵. Avant sa mission au Tchad, Hélène Jaffé avait déjà soigné des « victimes de tous les pays, de tous les continents » ⁵⁵⁶. Initialement médecin généraliste, Hélène Jaffé est ainsi devenue au fil des années spécialiste de victimisation de la torture ⁵⁵⁷. Sa compétence en la matière a notamment été reconnue par l'État français qui lui a demandé de rédiger un guide de prise en charge des victimes de torture⁵⁵⁸. Les financements que l'AVRE a reçus du Fonds des Nations Unies contre la torture et de l'Union Européenne attestent également de la reconnaissance dont elle bénéficiait.⁶

9. Dr. Jaffé is not listed on the List of Experts. However, her background as a medical practitioner and her direct experience with the specific method of *arbatachar* and victims from the broader region qualify her for an appointment as an expert in the case. The relevant excerpts of the judgment of the Habré -trial which relate to her testimony are included in Annex C. The Prosecution is in the process of contacting Dr. Jaffé.

⁶ *Ministère Public v Hissein Habré, Extraordinary African Chambers*, Judgment of 30 May 2016, para. 264.

10. Both proposed experts would be suitable candidates. The Prosecution submits it would be in the interest of justice to hear expert evidence on the physiological effects of the *arbatachar* method complementing the testimony of witnesses to be heard at trial, assist the Chamber's and Parties understanding of the harm, impact and potential long-term effects of the method and would thus assist in the Chamber's search for the truth.

III. RELIEF SOUGHT

11. For the reasons set out above, the Prosecution requests the appointment of one of the two experts proposed above or another suitable candidate set out in Annex A for an expertise on the physiological effects of the *arbatachar* method.



Karim A. A. Khan QC, Prosecutor

Dated this 24th day of August 2022
At The Hague, The Netherlands