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Date: **24 August 2026**

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 SECRET Annex A**

Public redacted version of “Prosecution’s Submissions on Registry’s Shortlist of Medical Experts, ICC-01/14-01/21-621-SECRET-Red” ICC-01/14-01/21-624-SECRET, dated 28 July 2023

Source: Office of the Prosecutor

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Mr Zavala Giler Osvaldo

☐ Counsel Support Section

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☐ Detention Section

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I. INTRODUCTION

1. The Prosecution submits its observations on the Registry's shortlist of Medical Experts¹ and on any directions to be given to prospective experts in line with the Trial Chamber's Order pursuant to rule 135 of the Rules of Procedure and Evidence dated 13 June 2023.²

II. CONFIDENTIALITY

2. The present submission and Annex A is classified SECRET as it relates to a Registry's filing and a Chamber's decision classified similarly pursuant to Regulation 23 *bis*(2) of the RoC and refers to sensitive information related to the health of the detained person.

III. PROCEDURAL HISTORY AND SUBMISSIONS

3. On 13 June 2023, pursuant to rule 135 of the Rules of Procedure and Evidence,³ Trial Chamber VI (the "Chamber") ordered the Registry to submit a shortlist of experts no later than 23 June 2023 for its consideration. The Chamber also invited observations from the Parties and Participants no later than 30 June 2023.⁴

4. On 15 June 2023, the Defence gave further information on the Registry transmission of the "Medical Officer's Report" dated 12 June 2023⁵ and requested reconsideration of the Order.⁶

5. On 16 June 2023, the Chamber rejected the Request, finding that it would facilitate the fairness and expeditiousness of the proceedings to have independent expert(s) who can objectively assess, *inter alia*, Mr SAID's medical condition and his prognosis and report to the Chamber directly.⁷

¹ ICC-01/14-01/21-621-SECRET-Red ("Registry's shortlist of Medical Experts").

² ICC-01/14-01/21-616-SECRET ("Order").

³ Referred to as "the Rules".

⁴ ICC-01/14-01/21-616-SECRET, paras. 6-8.

⁵ ICC-01/14-01/21-615-SECRET-Exp.

⁶ ICC-01/14-01/21-617-SECRET-Red ("Request").

⁷ ICC-01/14-01/21-618-SECRET-Red ("Decision").

6. On 22 June 2023, pursuant to regulation 35 of the Regulations of the Court,⁸ the Registry requested a further four weeks to transmit the shortlist of medical experts.⁹

7. On 23 June 2023, the Chamber granted the Registry's request and extended the time limit to 21 July 2023 for transmission of the shortlist of experts and to 28 July 2023 for observations on this shortlist by the parties.¹⁰

8. On 21 July 2023, the Registry filed a list of Medical Experts for the Chamber's consideration, proposing four experts from the list of Court experts, and selecting four external experts. The Registry further stated that it is currently taking the relevant administrative steps to include the four additional experts to the List of Experts, which may take several weeks.¹¹

IV. SUBMISSIONS

A. Observations on Registry's shortlist of Medical Experts

a) Relevant expertise and availability of the prospective expert(s)

9. The Prosecution agrees with the Registry's recommendations that only experts with both relevant expertise and availability should be considered for selection.¹² The guiding criteria for selecting expertise should be forensic experience in the issue of fitness to stand trial, and not only experience in treating the specific illnesses.

10. Questions of fitness to stand trial, on their own, do not relate to whether an accused has particular medical conditions. Rather, they concern whether the accused is able to exercise effectively his fair trial rights in the proceedings,¹³ and if special measures or adjustments are necessary to address any medical condition of the accused during the trial proceedings, should they affect the ability to stand trial.¹⁴ A rule 135(4) examination does not prescribe treatment primarily, but rather determines whether the accused suffers from a medical condition and, significantly, whether such condition affects his ability to meaningfully participate in his trial.

⁸ Referred to as "the RoC".

⁹ ICC-01/14-01/21-619-SECRET-Red.

¹⁰ Email from the Chamber dated 23 June 2023 at 15:22 and titled "Decision on the Registry's Request for an extension of time (ICC-01/14-01/21-619-SECRET-Red)".

¹¹ ICC-01/14-01/21-621-SECRET-Red.

¹² ICC-01/14-01/21-621-SECRET-Red, paras. 7-8, 10.

¹³ ICC-01/12-01/18-952-Conf, para. 36.

¹⁴ ICC-01/12-01/18-1006-Red, para.28.

This specialised and highly specific inquiry requires an understanding, on the part of the expert(s), of what constitutes meaningful participation by an accused person in their criminal trial. It also requires awareness of, and sensitivity to, the special circumstances of this examination conducted expressly for judicial or litigation purposes. In such circumstances, the subject (the accused person) knows that the results of the examination may affect the continuation of the proceedings against him/ her, which may potentially create pressures and incentives which can affect the expert's work. Therefore, the Prosecution respectfully requests the selection of experts with the demonstrated forensic experience.

b) Appointment of a prospective panel of experts

11. In appointing medical experts, the experts' forensic experience in assessing fitness to stand trial is key. However, not all appointed individuals need have this specific expertise. Rather, it would be appropriate to appoint a panel which is well balanced overall and includes experts with complementary expertise.

12. Since the Prosecution does not know what illness Mr SAID is suffering from, it is difficult to be categorical on the type of medical expertise needed. However, depending on the medical expertise required, the Prosecution respectfully submits that the Chamber appoints a panel of two or three experts with complementary expertise, varying background and working experience to assess Mr SAID's fitness to stand trial.

13. The Prosecution supports the selection of two or more experts from amongst the following: [REDACTED].

14. [REDACTED].¹⁵

15. [REDACTED]. [REDACTED]. [REDACTED].¹⁶

16. [REDACTED].¹⁷

¹⁵ ICC-01/14-01/21-621-SECRET-Anx2, pages 6-11 [REDACTED].

¹⁶ ICC-01/14-01/21-621-SECRET-Anx2, pages 35-40 (publications).

¹⁷ ICC-01/14-01/21-621-SECRET, para. 10; see also ICC-01/14-01/21-621-SECRET-Anx2, page 43 [REDACTED].

17. [REDACTED]. [REDACTED].¹⁸

18. [REDACTED].¹⁹ [REDACTED].

19. All these experts were found suitable after the Registry's assessment. Moreover, given their availability and interest to provide their expertise to the Chamber and geographical proximity, their appointment would make practical and logistical sense.

B. Observations on directions to be given to any prospective experts

a) Applicable legal standard and jurisprudence

20. The concept of 'fitness to stand trial', while not specifically defined in the Court's legal instruments, 'must be viewed as an aspect of the broader notion of fair trial'. It considers that whenever the accused, for reasons of ill health, is unable to meaningfully exercise their procedural rights, the trial cannot be fair and criminal proceedings must be adjourned until the obstacle ceases to exist.²⁰ A person is considered to be 'fit to stand trial' when he or she possesses the necessary capacities – to such a degree that they have an understanding of the essentials of the proceedings – to effectively exercise his or her fair trial rights and, as such, meaningfully participate in the proceedings before the Court against him or her.²¹

21. From the catalogue of fair trial rights in article 67(1) of the Rome Statute,²² the relevant capacities which can be discerned as necessary for the meaningful exercise of these procedural rights include, (i) the capacities to understand the charges²³ and the conduct,²⁴ (ii) purpose and possible consequences of the trial proceedings, (iii) instruct counsel in the preparation and

¹⁸ ICC-01/14-01/21-621-SECRET-Anx1, page 7 [REDACTED].

¹⁹ ICC-01/14-01/21-621-SECRET-Anx2, pages 1-2 [REDACTED].

²⁰ Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court, ICC-02/11-01/11-286-Red, 2 November 2012 ('*Gbagbo* First Decision on Fitness'), para. 43. See also Trial Chamber I, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Decision on the fitness of Laurent Gbagbo to stand trial, ICC-02/11-01/15-349, 27 November 2015 ('*Gbagbo* Second Decision on Fitness'), para. 33.

²¹ *Gbagbo* Second Decision on Fitness, ICC-02/11-01/15-349, para. 36.

²² Referred to as "the Statute".

²³ In this regard, the Prosecution notes that Article 64(8)(a) of the Statute specifically mandates that '[t]he Trial Chamber shall satisfy itself that the accused understands the nature of the charges'.

²⁴ Article 67(1)(a), (e), (f), (g) and (i) and Article 67(2) of the Statute.

SAID's fitness to stand trial, the absence of information on his health is concerning. More detailed information in this respect is therefore required in order to properly understand and, if needed, manage Mr SAID's physical health and safety while in detention.³⁶

25. Therefore, the Prosecution respectfully submits that the expert(s) should be instructed that the purpose of the examination is to assess: (i) the accused's medical condition ; (ii) his prognosis; (iii) his ability to participate in the proceedings, and (iv) whether any special measures or adjustments are necessary to address any medical condition during the trial.³⁷ The appointed expert(s) is/are not required to themselves make a determination of Mr SAID's fitness to stand trial; that is a legal determination to be made by the Chamber.³⁸ However the above considerations will assist the Chamber's assessment.

b) Joint Terms of Reference (ToR)

26. The Prosecution notes that a Terms of Reference (ToR) has yet to be articulated, which would serve to specifically guide any expert(s) appointed by the Chamber to assess Mr SAID.³⁹ Accordingly, the Prosecution recommends that the Chamber request the submission of a joint Terms of Reference by the Prosecution and the Defence.

c) Access to materials by the appointed expert(s)

27. In order to perform a full and accurate assessment, the appointed expert(s) should be provided with unrestricted access – in unredacted form - to the Accused's medical file, as well as prior medical reports,⁴⁰ detention reports, joint Registry and Defence reports⁴¹ and Defence submissions on the case record.⁴² The Prosecution considers that these materials may assist in conducting a full, contemporaneous and effective assessment of Mr SAID's health.

³⁶ Article 64(6)(e) states that the Chamber may, as necessary, 'provide for the protection of the accused (...)'.
³⁷ ICC-01/14-01/21-616-SECRET, paras. 6-8.

³⁸ ICC-02/11-01/15-253, para. 14.

³⁹ *Al Hassan* Registry recommendations on Rule 135 experts, ICC-01/12-01/18-980-Conf, paras. 21(f), 39.

⁴⁰ Including, but not limited to, any external medical practitioner's report.

⁴¹ Including, but not limited to, the periodic updates from the Medical Officer at the Detention Centre in joint Registry and Defence reports (referred to in ICC-01/14-01/21-616-SECRET, para. 4 and ICC-01/14-01/21-617-SECRET-Red, paras. 4, 21, 23, 47, 56).

⁴² Including, but not limited to, unredacted versions of the Defence's request providing further information on the Registry transmission of the "Medical Officer's Report" dated 12 June 2023 (ICC-615-SECRET-Exp) and requested reconsideration of the Order (ICC-01/14-01/21-617-SECRET-Red) dated 15 June 2023; the Defence's response to the Prosecution's request for additional information (ICC-01/14-01/21-600-SECRET-Red) dated 3 March 2023; the Defence's response to the OPCV's observations on the Prosecution's request for additional

28. The provision of medical records to experts for their assessment, is well-recognised by codes of medical ethics. Such records can be disclosed upon a court's order to appointed experts to facilitate their examination.⁴³ The Prosecution annexes the relevant provisions, and related commentary, of the French, Dutch and Belgium *Codes de Déontologie Médicale*, as Annex A. Any other interpretation would deprive a Trial Chamber of its ability to determine if the accused is fit to stand trial.

29. To facilitate the appointed expert(s) assessment, the Chamber should order the Defence to obtain Mr SAID's written consent allowing disclosure of his detention and medical records to the appointed expert(s) or to provide his views pursuant to regulation 92(4) of the RoC and regulation 156(2) of the Regulation of the Registry. In the absence of written consent, the Chamber may decide whether to nevertheless order the transmission of his medical record for the purposes of a medical examination pursuant to articles 21 and 64(8)(a) of the Statute and rules 113 and 135 of the Rules.⁴⁴

d) Visit to the Detention centre by the appointed expert(s)

30. In terms of logistics, and also to safeguard Mr SAID's well-being pursuant to article 64(6)(e) of the Statute, the Prosecution submits that it would be most effective and minimally intrusive to have all of the appointed experts visit the Detention Centre together if a panel of experts were to be appointed.

e) Interpretation

31. The Prosecution notes that the issue of interpretation is a matter to be considered in the context of the anticipated assessment of Mr SAID. The Registry should be able to facilitate the

information (ICC-01/14-01/21-602-SECRET-Red) dated 6 March 2023; and the status conference's transcript (ICC-01/14-01/21-T-047-SECRET-FRA ET) dated 7 February 2023.

⁴³ See *Code de Déontologie Médicale* (France, édition février 2021), articles R.4127-105 to R.4127-108 (« Exercice de la médecine d'expertise »: non cumul des rôles d'expert et médecin traitant ; récusation ; information de la personne examinée ; rédaction du rapport et secret) available at: [codedeont.pdf \(conseil-national.medecin.fr\)](https://www.conseil-national.medecin.fr/codedeont.pdf), hyperlink last accessed 26 July 2023 at 12:22, and the commentary of the *Conseil national de l'Ordre des médecins* on article 108 (*les conséquences de l'obligation du secret professionnel dans l'exercice de la médecine d'expertise*) available at [Article 108 - Rédaction du rapport et secret - Code de déontologie \(conseil-national.medecin.fr\)](https://www.conseil-national.medecin.fr/article-108-redaction-du-rapport-et-secret-code-de-deontologie), hyperlink last accessed 26 July 2023 at 12:24; Code of medical ethics (The Netherlands), articles 43-44 and commentary (available at : [Ordomedic Code 2018](https://www.ordomedic.nl/Code%202018), hyperlink last accessed 26 July 2023 at 12:28).

⁴⁴ *Gbagbo*, ICC-02/11-01/15-281, para. 8.

service of a Sango/French and/ or French/English Interpreter for the appointed expert(s) if necessary and expeditiously.

f) Contact with the appointed expert(s)

32. To maintain the impartiality of the appointed expert(s), the Prosecution submits that the parties and participants shall refrain from any contact with them on matters which relate to the present case.

g) Medical report of the appointed expert(s)

33. If the Chamber decides to appoint more than one expert, each expert chosen should give their independent expert opinion on Mr SAID's fitness to stand trial. This does not mean no interaction between the experts, but merely independent reporting. The appointed panel of experts should be instructed to file (i) a joint report; or (ii) a joint report specifying the conclusion(s) on which they agree and any individual reports as necessary containing the conclusion(s) on which they do not agree.

34. In anticipation of the redactions to be applied by the Defence to the filed medical report by the Registry, the Prosecution requests that no redactions may be applied to facts, conclusions or recommendations relating to Mr SAID's continued fitness to stand trial or to any impact his health may have on the trial, such as trial modalities or scheduling. In any event, redactions may not be applied in a manner that would prevent sensible observations being made on the relevant documents.

V. CONCLUSION

35. The Prosecution respectfully submits that, the Chamber appoints a panel of two or three experts and chooses between [REDACTED] for the reasons stated in paragraphs 11-19; instructs the appointed experts to file a joint medical report, if possible, with different individual expert opinions on, *inter alia*, Mr SAID's medical condition and prognosis, if necessary for the reasons stated in paragraph 33; orders the Defence to obtain Mr SAID's written consent allowing disclosure of his detention and medical records to the appointed

experts for the reasons stated in paragraph 27-29; and orders the Registry to facilitate the service of an Interpreter for the reasons stated in paragraph 31.

36. Without prejudice to the foregoing, the Prosecution respectfully reserves its right to provide additional submissions once the assessment and a prognosis has been provided to the Chamber by the medical expert(s).

A handwritten signature in black ink, appearing to read 'Mame Mandiaye Niang', with a large, stylized initial 'M' on the left.

Mame Mandiaye Niang, Deputy Prosecutor

Dated this 24th day of August 2026
At The Hague, The Netherlands