



**Original: English**

**No. ICC-01/12-01/18**

**Date: 24 March 2021**

**Date of original: 21 August 2020**

**TRIAL CHAMBER X**

**Before:** Judge Antoine Kesia-Mbe Mindua, Presiding Judge  
Judge Tomoko Akane  
Judge Kimberly Prost

**SITUATION IN THE REPUBLIC OF MALI**

**IN THE CASE OF  
*THE PROSECUTOR v. AL HASSAN AG ABDOUL AZIZ AG MOHAMED AG  
MAHMOUD***

**Public redacted version of**

**Decision appointing experts for the purpose of a medical examination pursuant  
to Rule 135 of the Rules of Procedure and Evidence**

**Decision to be notified in accordance with Regulation 31 of the *Regulations of the Court* to:**

**The Office of the Prosecutor**

Fatou Bensouda  
James Stewart

**Counsel for the Defence**

Melinda Taylor  
Kirsty Sutherland  
Antoine Vey

**Legal Representatives of Victims**

Seydou Doumbia  
Mayombo Kassongo  
Fidel Luvengika Nsita

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparations**

**The Office of Public Counsel for Victims**

**The Office of Public Counsel for the  
Defence**

**States Representatives**

*Amicus Curiae*

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**REGISTRY**

**Registrar**

Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

Harry Tjonk

**Victims Participation and Reparations  
Section**

**Other**

**TRIAL CHAMBER X** of the International Criminal Court, in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, having regard to Articles 64(2) and 67(1) of the Rome Statute (the ‘Statute’), Rule 135 of the Rules of Procedure and Evidence (the ‘Rules’), and Regulation 103 of the Regulations of the Court (the ‘Regulations’), issues the following ‘Decision appointing experts for the purpose of a medical examination pursuant to Rule 135 of the Rules of Procedure and Evidence’.

## **I. Procedural history and submissions**

1. On 6 January 2020, the Chamber set the date for the commencement of trial at 14 July 2020, with the presentation of evidence to begin on 25 August 2020, and adopted a calendar leading up to this date.<sup>1</sup>
2. On 30 June 2020, the Chamber convened a Single Judge status conference to deal with issues raised under Rule 134 of the Rules and other matters related to the commencement of the trial.<sup>2</sup>
3. On 8 July 2020, the Chamber issued the ‘Decision on Defence Adjournment Request’ (the ‘Adjournment Decision’), rejecting the Defence request to adjourn the proceedings,<sup>3</sup> and thereby confirming that the trial would commence on 14 July 2020.<sup>4</sup>
4. On 9 July 2020, the Defence filed a ‘formal notice of its intention to raise the defence that Mr Al Hassan is not fit to stand trial’ and requested a status conference to be convened prior to trial commencement (the ‘Defence Notice’).<sup>5</sup>
5. On 13 July 2020, the Chamber issued the ‘Decision on the Defence notice on Mr Al Hassan’s unfitness to stand trial’ (the ‘Defence Notice Decision’) in which it rejected the Defence Notice, finding that it was untimely, that the issue of

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<sup>1</sup> Decision Setting the Commencement Date of the Trial, [ICC-01/12-01/18-548](#).

<sup>2</sup> Transcript of hearing, ICC-01/12-01/18-T-015-CONF-ENG.

<sup>3</sup> Defence adjournment request, 3 July 2020, ICC-01/12-01/18-927-Conf-Red.

<sup>4</sup> Decision on Defence Adjournment Request, ICC-01/12-01/18-940-Conf.

<sup>5</sup> Defence notice of its intention to raise unfitness to stand trial and request for a status conference, ICC-01/12-01/18-942-Conf (with confidential Annex A).

unfitness should not be raised via a ‘notice’, and that after considering all available information, the Chamber was not convinced that Mr Al Hassan was unfit to stand trial.<sup>6</sup>

6. On the same date, the Defence filed a request seeking reconsideration, or in the alternative leave to appeal the Adjournment Decision.<sup>7</sup>
7. On 14 July 2020, the trial against Mr Al Hassan commenced. At the start of the trial hearing, the Defence verbally raised a motion asserting its doubt of the accused’s fitness to stand trial and requesting the Chamber to order a qualified examination (the ‘Fitness Motion’).<sup>8</sup> The Defence referred during the hearing to a written motion which was notified that same day at 14:18.<sup>9</sup> The Office of the Prosecutor (the ‘Prosecution’) made oral submissions opposing the Fitness Motion.<sup>10</sup>
8. In the course of the same hearing, the Chamber rendered an oral decision rejecting the request to reconsider the Adjournment Decision and the Fitness Motion.<sup>11</sup> However, having regard to Rule 135 of the Rules which allows the Chamber to order a medical examination *proprio motu*, the Chamber instructed the Registry, in consultation with the parties, to make recommendations on medical experts by 24 July 2020 and the parties to provide observations on the Registry’s recommendations by the same date.<sup>12</sup>
9. On 27 July 2020, the Registry filed its recommendations on the medical experts (the ‘Registry Recommendations’).<sup>13</sup> The Registry recommends that the

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<sup>6</sup> Decision on the Defence notice on Mr Al Hassan’s unfitness to stand trial, ICC-01/12-01/18-952-Conf.

<sup>7</sup> Defence request for reconsideration of the Decision on the Defence Adjournment Request, ICC-01/12-01/18-953-Conf-Red.

<sup>8</sup> Transcript of hearing, [ICC-01/12-01/18-T-017-Red-ENG](#), p. 23, line 1 - p. 25, line 17.

<sup>9</sup> Defence request regarding Mr. Al Hassan's fitness, ICC-01/12-01/18-956-Conf.

<sup>10</sup> Transcript of hearing, [ICC-01/12-01/18-T-017-Red-ENG](#), p. 26, line 12 – p. 27, line 21.

<sup>11</sup> Transcript of hearing, [ICC-01/12-01/18-T-017-Red-ENG](#), p. 30, line 2 – p. 32, line 10. A decision setting out the reasons for rejecting the requests for reconsideration and leave to appeal Adjournment Decision was issued on 28 July 2020. Decision on Defence request for reconsideration and leave to appeal the Decision on the Defence Adjournment Request, ICC-01/12-01/18-983-Conf.

<sup>12</sup> Transcript of hearing, [ICC-01/12-01/18-T-017-Red-ENG](#), p. 32, lines 13-18. The deadline was later extended until 27 July 2020. See Email from the Chamber to the parties, 24 July 2020, at 15:55 and Email from the Chamber to the parties, 24 July 2020, at 16:06.

<sup>13</sup> Registry Recommendations on Experts for the purposes of Rule 135 of the Rules of Procedure and Evidence, ICC-01/12-01/18-980-Conf.

Chamber appoint a panel consisting of at least three experts and consider appointing experts with mixed backgrounds taking into consideration *inter alia*: experience in conducting examinations on fitness to stand trial; expertise in the field of forensic psychiatry; and expertise in psychology and psychiatry.<sup>14</sup> The Registry also submits that knowledge on or experience related to Mr Al Hassan's cultural background may be an additional asset.<sup>15</sup> With respect to the language of the medical examination, the Registry informs the Chamber that it would be able to facilitate an Arabic interpreter, provided that notice is given five days in advance.<sup>16</sup>

10. The Registry also submits a shortlist of potential experts that were the subject of discussion during the consultation process with the parties (the 'Expert Shortlist').<sup>17</sup> Without prejudice to the Chamber's determination on the matter, and while noting that the parties failed to come to a mutual agreement on the experts and that there are certain questions of law which were better addressed by the Chamber, the Registry observes that there are multiple combinations of experts included in the Expert Shortlist which would allow for the appointed panel to have experts with mixed backgrounds.<sup>18</sup>
11. On the same date, the Prosecution submitted its observations on the Registry Recommendations (the 'Prosecution Observations').<sup>19</sup> The Prosecution firstly recalls that, in accordance with the established case law of the Court, fitness to stand trial concerns the accused's ability to effectively exercise his or her fair trial rights, and does not concern, in and of itself, whether he or she has particular medical conditions. Guided by this case-law, the Prosecution submits that the issue under consideration in this context differs substantially from the issues pertaining to the Defence's Termination Motion,<sup>20</sup> and that the Chamber should

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<sup>14</sup> Registry Recommendations, ICC-01/12-01/18-980-Conf, para. 40.

<sup>15</sup> Registry Recommendations, ICC-01/12-01/18-980-Conf, para. 40.

<sup>16</sup> Registry Recommendations, ICC-01/12-01/18-980-Conf, para. 42.

<sup>17</sup> Shortlist of Medical Experts for the Psychological and Psychiatric Examination With a View to Assessing Mr Al Hassan, ICC-01/12-01/18-980-Conf-AnxA.

<sup>18</sup> Registry Recommendations, ICC-01/12-01/18-980-Conf, paras 41-45.

<sup>19</sup> Email from the Prosecution, 27 July 2020, at 17:12.

<sup>20</sup> See Defence Request to terminate the proceedings, ICC-01/12-01/18-885-Conf-Exp (confidential *ex parte*, available only to the Defence and Prosecution; with ten confidential and confidential *ex parte* Annexes; a confidential redacted version of the main filing was notified simultaneously, ICC-01/12-

appoint experts who possess forensic experience in assessing fitness to stand trial, rather than experts focusing on treating alleged torture survivors. The Prosecution also objects to the Defence's proposal to appoint two individuals who have already been involved in the present proceedings as Defence experts, and submits that 'any witnesses who presented or will present views in this case on behalf of either party should be excluded. In the same vein, any witnesses who presented or will present any views in other unrelated cases before the ICC on behalf of either party should be considered by the Chamber, if other conditions are met'.<sup>21</sup>

12. The Defence also submitted its observations on 27 July 2020, in which it reiterates its position that Mr Al Hassan lacks the ability to effectively participate in the proceedings at this particular point in time (the 'Defence Observations').<sup>22</sup> In the Defence's view, the key issue for the Chamber's consideration should be whether the proposed experts have demonstrated expertise in assessing if and how a particular type of life event (or combination of events) might impact on the cognitive capacity and functioning of individuals.<sup>23</sup> The Defence also submits that expertise relating to treating torture survivors is relevant, as such experts would be more suited for conducting a focused and relevant assessment of Mr Al Hassan, and issues of potential treatment is relevant in case the cognitive capacity of the accused is found to have been lacking.<sup>24</sup>
13. Noting that it will not be present during the examination, the Defence also submits that it should be able to assert privilege/confidentiality over information and records provided in relation to Mr Al Hassan.<sup>25</sup> It also argues that appointing experts who have been involved in other proceedings before the Court would be inappropriate.<sup>26</sup>

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01/18-885-Conf-Red; all filings notified on 17 June 2020; a corrigendum of the main filing was later notified on 25 June 2020, ICC-01/12-01/18-885-Conf-Exp-Corr; public redacted versions of the main filing were also later notified and subsequently reclassified confidential with a final public redacted version notified on 29 July 2020, [ICC-01/12-01/18-885-Corr-Red3](#)).

<sup>21</sup> Emphasis in original.

<sup>22</sup> Defence observations on appointment of medical experts, ICC-01/12-01/18-981-Conf (a corrigendum was notified on 28 July 2020, ICC-01/12-01/18-981-Conf-Corr).

<sup>23</sup> Defence Observations, ICC-01/12-01/18-981-Conf, para. 12.

<sup>24</sup> Defence Observations, ICC-01/12-01/18-981-Conf, paras 12, 14-17.

<sup>25</sup> Defence Observations, ICC-01/12-01/18-981-Conf, paras 6-7.

<sup>26</sup> Defence Observations, ICC-01/12-01/18-981-Conf, para. 20.

14. On 14 August 2020, the Defence filed a request seeking reclassification of document ICC-01/12-01/18-956-Conf (the ‘Defence Reclassification Request’).<sup>27</sup>
15. On 18 August 2020, the Chamber decided to adjourn the start of the presentation of evidence until 8 September 2020.<sup>28</sup>

## II. Analysis

### A. Reasons for ordering the medical examination (Rule 135(2) of the Rules)

16. At the outset, the Chamber recalls that it previously rejected the Defence Notice on the basis that ‘it ha[d] not been presented with sufficient information to conclude that Mr Al Hassan is unfit to stand trial’.<sup>29</sup> Based on this conclusion, the Chamber also rejected the Defence request to conduct a medical examination for the purpose of examining Mr Al Hassan’s current fitness to stand trial.<sup>30</sup> At the beginning of the trial, and in response to the Fitness Motion, the Chamber re-affirmed its previous conclusion and found that there existed no available information supporting the claim that Mr Al Hassan is unfit to stand trial.<sup>31</sup>
17. The Chamber considers that no new information warranting reconsideration of this conclusion has been provided. In these circumstances, and contrary to the Defence’s arguments,<sup>32</sup> the Chamber finds that no medical examination is warranted to examine Mr Al Hassan’s fitness to stand trial at this particular point in time, an issue which has already been settled by the Chamber.
18. That being said, the Chamber observes that pursuant to Rule 135(1) of the Rules, the Chamber may order a medical examination, not only for the purpose of its determination under Article 64(8)(a) of the Statute, but for ‘any other reason’.<sup>33</sup>

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<sup>27</sup> Request for reclassification of ICC-01/12-01/18-956-Conf, [ICC-01/12-01/18-997](#).

<sup>28</sup> Decision adjourning the evidentiary hearings, ICC-01/12-01/18-999.

<sup>29</sup> Defence Notice Decision, ICC-01/12-01/18-952-Conf, para. 42.

<sup>30</sup> Defence Notice Decision, ICC-01/12-01/18-952-Conf, para. 49.

<sup>31</sup> Transcript of hearing, [ICC-01/12-01/18-T-017-Red-ENG](#), p. 30, line 2 – p. 32, line 10.

<sup>32</sup> Defence Observations, ICC-01/12-01/18-981-Conf, para. 1.

<sup>33</sup> See Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, Decision on three applications for leave to appeal, 29 November 2012, [ICC-02/11-01/11-307](#), para. 49; Pre-Trial Chamber I, *The Prosecutor v.*

As part of the Chamber's responsibility to ascertain that an accused is not unfit to stand trial Article 64(2) of the Statute,<sup>34</sup> it is also incumbent upon the Chamber to ensure that Mr Al Hassan possesses *ongoing* fitness to stand trial throughout the trial proceedings.

19. In this regard, the Chamber notes that the Defence consultant opines, *inter alia*, that Mr Al Hassan's medical condition appears to be deteriorating, and that his symptoms could worsen over the course of the proceedings.<sup>35</sup> The Defence consultant further recommends that in view of Mr Al Hassan's conditions, his capacity to contribute to his defence should be assessed by a clinician.<sup>36</sup>
20. The Chamber recalls its previous finding that 'the question of whether an accused is unfit to stand trial does not concern, in and of itself, whether he or she has particular medical conditions, but whether the accused is able to exercise effectively his fair trial rights in the proceedings'.<sup>37</sup> Nonetheless, the Chamber must satisfy itself that, notwithstanding the aforementioned opinion expressed by the Defence consultant, Mr Al Hassan's *ongoing* fitness to stand trial is not impeded.
21. In this respect, it is relevant to receive expert advice to identify any medical issues which could affect his ongoing fitness to stand trial. As part of the Chamber's responsibility under Article 64(2) of the Statute, it may be necessary for the Chamber to adopt certain measures or make adjustments in order to address any such conditions during the trial proceedings, including practical arrangements as regards Mr Al Hassan's attendance and participation at trial.<sup>38</sup> Moreover, while the Chamber has not been presented with sufficient information to conclude that Mr Al Hassan is unfit to stand trial at the present time, the Chamber finds it appropriate to have the opinions of independent experts who are appointed by

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Laurent Gbagbo, Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court, 2 November 2012, [ICC-02/11-01/11-286-Red](#) (hereinafter: '*Gbagbo* Fitness Decision'), para. 56.

<sup>34</sup> Defence Notice Decision, ICC-01/12-01/18-952-Conf, para. 36.

<sup>35</sup> ICC-01/12-01/18-942-Conf-AnxA. See also Defence request regarding Mr. Al Hassan's fitness, ICC-01/12-01/18-956-Conf, para. 9.

<sup>36</sup> ICC-01/12-01/18-942-Conf-AnxA, p. 3.

<sup>37</sup> See Defence Notice Decision, ICC-01/12-01/18-952-Conf, para. 36.

<sup>38</sup> See *Gbagbo* Fitness Decision, para. 51.

virtue of the present decision in order to properly continue to assess fitness to stand trial as the proceedings continue.

22. For these reasons, and pursuant to Rule 135 of the Rules, the Chamber orders a medical examination to be conducted to assist the Chamber in assessing and addressing issues which may affect Mr Al Hassan's *ongoing* fitness to stand trial.

#### **B. Appointment of medical experts**

23. At the outset, the Chamber notes that [REDACTED] and [REDACTED] have indicated that they are unavailable to conduct the medical examination. These experts were therefore not considered by the Chamber.
24. The Chamber considers it appropriate to address initially the issue of conflict of interest and, in particular, whether experts appointed by a party in the present case, experts appointed in other proceedings before the Court, and experts having a professional affiliation with experts appointed by a party in the present case may be appointed by the Chamber pursuant to Rule 135 of the Rules.
25. The Chamber is of the view that from the standpoint of impartiality and neutrality, individuals who have already been engaged with the present case on behalf of a party or the participants should not be appointed as Chamber's experts.<sup>39</sup> Considering that two of the experts on the Expert Shortlist have been engaged with the Defence in the present case and already prepared reports, the Chamber does not find it appropriate to select these experts for the purpose of the present medical examination.
26. However, the Chamber, in principle, does not consider that experts who have been involved in other proceedings before the Court should be excluded. Excluding such experts is not only unnecessary but would also unduly narrow the scope of experts that may be appointed by the Chamber. It would also be illogical, considering that the Registry maintains a list of experts that may be appointed in multiple judicial proceedings before this Court. The Chamber also does not

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<sup>39</sup> Similarly see Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on Defence Request to Order an Adjournment and a Medical Examination, 16 January 2019, [ICC-02/04-01/15-1412](#), paras 10-11.

consider that the mere fact that an individual has professional ties with an expert appointed by a party in the present case is cause for exclusion. Provided that individuals have not worked on matters pertaining to the present case on behalf of a party or participant, they may be appointed by the Chamber, should they possess the necessary qualifications.

27. For these reasons, Dr Cohen and Dr Crosby will not be considered by the Chamber.
28. Turning to the experts' qualifications, in accordance with the case law of the Court,<sup>40</sup> and as submitted by the Prosecution<sup>41</sup> and noted above, the question of whether the accused is unfit to stand trial does not concern, in and of itself, whether the accused has particular medical conditions, but concerns whether the accused is able to exercise effectively his fair trial rights in the proceedings against him irrespective of the existence of any such medical condition. It also concerns whether special measures or adjustments are necessary to address any medical condition of the accused during the trial proceedings, to the extent that such conditions may affect the accused's fitness to stand trial. For this reason, in appointing medical experts pursuant to Rule 135 of the Rules, the Chamber has placed great importance on the experts' forensic experience in assessing fitness to stand trial.
29. The Chamber is however of the view that it is not required for all appointed individuals to possess this specific expertise. Rather, and as recommended by the Registry,<sup>42</sup> the Chamber has sought to appoint a panel which is overall well balanced and includes experts with complementary expertise.
30. With respect to linguistic skills, the Chamber observes that the parties disagree on whether French speakers should be appointed to examine Mr Al Hassan. Considering the Registry's assurance that Arabic interpretation will be provided,<sup>43</sup> the Chamber does not consider it necessary to give priority to French speaking experts. The Chamber also does not consider it necessary for the panel

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<sup>40</sup> See Defence Notice Decision, ICC-01/12-01/18-952-Conf, para. 36 and jurisprudence cited therein.

<sup>41</sup> Email from the Prosecution, 27 July 2020, at 17:12.

<sup>42</sup> Registry Recommendations, ICC-01/12-01/18-980-Conf, para. 40.

<sup>43</sup> Registry Recommendations, ICC-01/12-01/18-980-Conf, para. 42.

to include Dutch speaking experts, as relevant material can be translated into French or English as necessary.

31. In light of the aforementioned considerations, the Chamber decides to appoint Dr Roland Weierstall-Pust, Dr Gillian Mezey and Dr Michael Korzinski (the ‘Panel’) for the purpose of undertaking the present medical examination.
32. In appointing the experts, the Chamber has had due regard to the qualifications and competence of all experts included in the Expert Shortlist. In particular, the Chamber observes that Dr Weierstall-Pust has extensive forensic experience in assessing the condition of victims and alleged perpetrators from a wide range of post-conflict communities. Dr Mezey is Professor of Forensic Psychiatry at St George’s University of London, who has published extensively on issues relating to forensic psychiatry. She also has relevant international experience, notably as a mental health expert on two European Commission missions in the former Yugoslavia, during which she has advised on the establishment of a psychological programme for refugees and displaced persons. Both Dr Weierstall-Pust and Dr Mezey also possess experience testifying in proceedings before the Court. The Chamber appoints Dr Korzinski in view of his significant experience in areas of severe and complex trauma, including assessment of long-term rehabilitation of torture survivors. The Chamber has also taken into account Dr Korzinski’s expertise in developing culturally sensitive methods in assessing complex trauma. The Chamber finally notes that all three experts on the Panel are on the Registry’s list of experts and/or were requested by a party, within the meaning of Rule 135(3) of the Rules.

### **C. Directions on the medical examination**

33. The Chamber recalls that the concept of ‘fitness to stand trial’ must be viewed as an aspect of the broader notion of fair trial which is rooted in the idea that whenever the accused is, for reasons of ill health, unable to meaningfully exercise his or her procedural rights, the trial cannot be fair and criminal proceedings must be adjourned until the obstacle ceases to exist.<sup>44</sup>

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<sup>44</sup> Defence Notice Decision, ICC-01/12-01/18-952-Conf, para. 33.

34. A number of relevant capacities can be discerned which are necessary for the meaningful exercise of these procedural rights. These include, *inter alia*, capacities to understand the conduct, purpose and possible consequences of the trial proceedings, instruct counsel and, if desired, to make a statement.<sup>45</sup>
35. It is not however required that these capacities must be present at their notionally highest level, or at the highest level that a particular accused has ever enjoyed in respect of each capacity. The threshold is met when an accused has these capacities, viewed overall and in a reasonable manner.<sup>46</sup> Furthermore, the Chamber recalls that the meaningful exercise of one's fair trial rights does not require that the person be able to exercise them as if he or she were trained as a lawyer or a judicial officer.<sup>47</sup>
36. As recalled above, even where a medical examination is ordered under Rule 135 of the Rules, it is the exclusive responsibility of the Chamber to determine the fitness of the accused, in view of its obligations under Article 64(2) of the Statute.<sup>48</sup> The role of the parties and appointed medical experts in connection to the determination of whether an accused is unfit to stand trial is better seen as assisting the Chamber in the exercise of its obligation.<sup>49</sup>
37. In light of the aforementioned considerations, and in order to assist the Chamber's determination on the continued fitness of Mr Al Hassan, the Panel is instructed 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

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<sup>45</sup> Defence Notice Decision, ICC-01/12-01/18-952-Conf, para. 34.

<sup>46</sup> Defence Notice Decision, ICC-01/12-01/18-952-Conf, para. 34.

<sup>47</sup> Defence Notice Decision, ICC-01/12-01/18-952-Conf, para. 35.

<sup>48</sup> See also Trial Chamber I, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Order to conduct a medical examination of Mr Gbagbo under Rule 135 of the Rules, 30 September 2015, [ICC-02/11-01/15-253](#), para. 14.

<sup>49</sup> Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on the Defence Request to Order a Medical Examination of Dominic Ongwen, 16 December 2016, [ICC-02/04-01/15-637-Red](#), para. 11; *Gbagbo Fitness Decision*, para. 56.

procedural rights, as described and discussed above from paragraphs 33 to 36; and

- The measures/adjustments, if any, that are recommended to address any issue above for the purpose of ongoing trial proceedings and/or for ongoing detention.
38. The Registry is directed to provide all necessary assistance to the Panel, in order for it to undertake the medical examination. The Chamber instructs the Panel to provide a report, jointly to the extent possible and as considered appropriate, by 15 October 2020. The joint or individual reports of the Panel should be submitted to the Registry, which shall file the joint or individual reports on the record as confidential *ex parte*, Defence and Registry only.
  39. Thereafter, the Defence may propose any redactions to the Registry, together with justifications within five days of notification of the Panel's report(s). The Registry should then file confidential redacted version(s) of the report(s) on the record as soon as practicable. Redactions may not be applied to facts, conclusions or recommendations which relate to Mr Al Hassan's continued fitness to stand trial.
  40. In order to maintain the impartiality of the Panel, the parties and participants shall refrain from any contact with the appointed experts on matters which relate to the present case.
  41. With respect to the Panel's access to medical records and opinions filed on the case record, the Defence proposes that the Panel be granted access to all such filings.<sup>50</sup> The Chamber considers that these filings may indeed be of assistance in conducting the medical examination and therefore instructs the Registry to facilitate the Panel's access to these filings.
  42. Finally, and considering that reasons for maintaining a confidential classification has ceased to exist, the Chamber grants the Defence Reclassification Request.

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<sup>50</sup> Defence Observations, ICC-01/12-01/18-981-Conf, para. 11.

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

**ORDERS** that a medical examination of Mr Al Hassan be conducted in accordance with the present decision;

**APPOINTS** a panel consisting of Dr Roland Weierstall-Pust, Dr Gillian Clare Mezey and Dr Michael Korzinski to undertake the aforementioned medical examination;

**INSTRUCTS** the panel of experts to submit a report, jointly to the extent possible and as considered appropriate, by 15 October 2020, and in accordance with paragraph 37 above;

**INSTRUCTS** the Registry to put on the record the original and redacted versions of the Panel's report(s) in accordance with paragraphs 38 and 39 above;

**INSTRUCTS** the Registry to make the necessary arrangements to facilitate the conduct of the examination; and

**GRANTS** the Defence Reclassification Request and **INSTRUCTS** the Registry to reclassify document ICC-01/12-01/18-956-Conf as public.

Done in both English and French, the English version being authoritative.



**Judge Antoine Kesia-Mbe Mindua**

**Presiding Judge**



**Judge Tomoko Akane**



**Judge Kimberly Prost**

Dated this Friday, 21 August 2020

At The Hague, The Netherlands