

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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**No.: ICC-01/14-01/21
Date: 15 December 2023**

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
*THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Public Redacted

Decision on Mr Said's Fitness to Stand Trial

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

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Unrepresented Victims

**Unrepresented Applicants
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Dr Michel Haddad
Dr Robertus Franciscus Maria Bevers

TRIAL CHAMBER VI of the International Criminal Court, in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, having regard to article 64(2) of the Rome Statute (the ‘Statute’), rule 135 of the Rules of Procedure and Evidence (the ‘Rules’), regulation 103 of the Regulations of the Court (the ‘Regulations’) and regulation 155 of the Regulations of the Registry, issues this ‘Decision on Mr Said’s Fitness to Stand Trial’.

I. PROCEDURAL HISTORY

1. On 18 January 2023, the Chamber concluded hearing the testimony of the Office of the Prosecutor’s (the ‘Prosecution’) sixteenth witness and adjourned the proceedings.¹

2. In late January 2023, Mr Said underwent scheduled medical treatment.

3. On 7 February 2023, the Chamber convened a status conference in closed session. During the status conference, the Registry informed the Chamber, parties and participants, *inter alia*, that Mr Said was not capable of appearing at hearings for medical reasons and that he would likely be unable to participate in hearings for at least six months.² The Chamber further notified the parties and participants that Mr Said had not waived his right to be present at trial in accordance with article 67(1)(d) of the Statute, and thus the trial could not continue.³

4. On 8 March 2023, the Chamber rejected a request by the Prosecution for further information regarding the health of the accused.⁴ Therein, the Chamber reiterated that there was ‘no possibility for the trial to proceed’ given Mr Said’s state of health and stated that it was ‘premature to enter into considerations of fitness to stand trial’.⁵ However, the Chamber reassured the parties and participants that it would continue ‘to closely monitor the situation’ in respect of Mr Said’s health.⁶

¹ Transcript of hearing, 18 January 2023, ICC-01/14-01/21-T-046-CONF-ENG CT, p. 76.

² Transcript of hearing, 7 February 2023, ICC-01/14-01/21-T-047-SECRET-ENG, p. 5

³ Transcript of hearing, 7 February 2023, ICC-01/14-01/21-T-047-SECRET-ENG, p. 4.

⁴ Decision on the Prosecution’s Request for Additional Information, 8 March 2023, ICC-01/14-01/21-603-SECRET (the ‘Decision on the Prosecution’s Request for Additional Information’).

⁵ Decision on the Prosecution’s Request for Additional Information, para. 18.

⁶ Decision on the Prosecution’s Request for Additional Information, para. 20.

5. On 12 June 2023, following a period in which the Chamber received (with Mr Said's consent) periodic updates from the Medical Officer at the Detention Centre regarding Mr Said's health, the Registry filed a report from the Medical Officer indicating that Mr Said had ceased to give his consent for his medical information to be disclosed to the Chamber.⁷

6. On 13 June 2023, the Chamber, acting pursuant to rule 135 of the Rules, ordered the Registry to submit to the Chamber, for its consideration, a shortlist of medical experts for the purpose of conducting a medical examination of the accused (the 'Order for a Shortlist of Potential Experts').⁸

7. On 14 August 2023, following submissions from the parties, participants and the Registry, the Chamber appointed Dr Michel Haddad and Dr Robertus Franciscus Maria Bevers (hereinafter 'the Panel') to undertake a medical examination of Mr Said pursuant to rule 135 of the Rules (the 'Decision Appointing Experts').⁹ Therein, the Chamber ordered, *inter alia*, the Panel to assess: (i) the medical condition of the accused; (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 of the accused during the trial proceedings.¹⁰

8. On 24 August 2023, the Chamber ordered the Registry to provide the Panel with all currently available medical information regarding Mr Said (the 'Decision Concerning Access to Medical Records').¹¹

⁷ Annex A to the Registry Transmission of the Medical Officer's Report, 12 June 2023, ICC-01/14-01/21-615-SECRET-Exp-Anx.

⁸ Order pursuant to rule 135 of the Rules of Procedure and Evidence, 13 June 2023, ICC-01/14-01/21-616-SECRET.

⁹ Decision Appointing Experts for the Purpose of a Medical Examination pursuant to Rule 135 of the Rules of Procedure and Evidence, 24 August 2023, ICC-01/14-01/21-630-Red. A SECRET *ex parte* and SECRET Redacted version were filed on 14 August 2023 (ICC-01/14-01/21-630-SECRET-Exp) (ICC-01/14-01/21-630-SECRET-Red).

¹⁰ Decision Appointing Experts, ICC-01/14-01/21-630-Red, para. 39.

¹¹ Corrected version of SECRET redacted version of Decision Concerning Access of Experts to Mr Said's Medical Records, 29 August 2023, ICC-01/14-01/21-634-SECRET-Red, 5 September 2023, ICC-01/14-01/21-634-SECRET-Red-Corr. (A SECRET *ex parte* version was filed on 24 August 2013 – ICC-01/14-01/21-624-SECRET-Exp).

9. On 17 November 2023, the Chamber rejected a request by the Defence to provide additional information to the Panel (the ‘Decision on the Defence’s Request to Provide Information to the Experts’)¹²
10. On 17 November 2023, Mr Said was examined by the Panel.
11. On 30 November 2023, the Panel submitted its report to the Registry and an *ex parte* version (Defence and Registry only) was filed on the record (the ‘Panel’s Report’).¹³
12. On 4 December 2023, the Defence proposed redactions to the Panel’s Report and a SECRET redacted version was filed on the record.¹⁴ The Defence’s justifications for its proposed redactions were filed the following day.¹⁵
13. On 5 December 2023, the Chamber notified the parties and participants that it had approved the Defence’s proposed redactions.¹⁶
14. On 11 December 2023, the Prosecution,¹⁷ Defence¹⁸ and Common Legal Representative of Victims¹⁹ (the ‘CLRv’) filed their submissions on the Panel’s Report (the ‘Prosecution’s Submissions’, ‘Defence’s Submissions’ and ‘Victims’ Submissions’ respectively).

¹² Decision on the Defence’s Request to Provide Information to the Experts, 17 November 2023, ICC-01/14-01/21-648-SECRET.

¹³ Annex II to the Registry Transmission of the Panel of Experts’ Report, 30 November 2023, ICC-01/14-01/21-654-SECRET-Exp-AnxII.

¹⁴ Annex to the Registry’s Transmission of the Defence’s Redacted Panel of Experts’ Report, 4 December 2023, ICC-01/14-01/21-660-SECRET-Anx.

¹⁵ Justifications aux expurgations apposées au Rapport des Experts désignés par la Chambre en application du paragraphe 49 de la décision du 14 août 2023 (ICC-01/14-01/21-630-SECRET-Exp), 5 December 2023, ICC-01/14-01/21-661-SECRET-Exp.

¹⁶ Email from the Chamber to the parties and participants, dated 5 December 2023 at 15:59.

¹⁷ Prosecution’s Submissions regarding the Panel of Experts’ Report concerning the Accused’s fitness to stand trial, 11 December 2023, ICC-01/14-01/21-664-SECRET (the ‘Prosecution’s Submissions’).

¹⁸ Observations de la Défense portant sur l’inaptitude actuelle de Monsieur Said à être jugé, le rapport des experts ICC-01/14-01/21-660-SECRET-Anx et demande de surseoir à statuer sur l’aptitude future de Monsieur Said en l’absence des éléments utiles pour se prononcer tant sur l’aptitude que sur le besoin d’aménagements., 11 December 2023, ICC-01/14-01/21-665-SECRET, with one SECRET annex (the ‘Defence’s Submissions’).

¹⁹ Victims’ Observations on the Panel of Experts’ Report (ICC-01/14-01/21-660-SECRET-Anx), 11 December 2023, ICC-01/14-01/21-666-SECRET (the Victims’ Submissions’).

II. SUBMISSIONS

A. Panel's Report

15. The Panel examined Mr Said on 17 November 2023.²⁰ The Panel observes that during its objective clinical examination Mr Said was well orientated and cooperative²¹ and [REDACTED].²² Similarly, the Panel notes that Mr Said informed it, *inter alia*, that he feels, generally speaking, in good health and that he prefers to rest for two to three more months before resuming trial.²³

16. In respect of the four questions posed by the Chamber in the Decision Appointing Experts, the Panel makes a number of observations.

17. First, in respect of the medical condition of the accused, the Panel assessed Mr Said's medical history and recent medical interventions.²⁴ Similarly, it also took into account the results of its examination of the accused.²⁵ In this regard, in its assessment, the Panel finds, *inter alia*, that Mr Said's general health is stable, [REDACTED].²⁶

18. Second, in respect of Mr Said's prognosis, the Panel recalls that the pathologies of Mr Said and the complications he suffered required a long period of hospitalisation, however, the Panel reiterates that Mr Said's state of health is stable and finds that his overall prognosis is good.²⁷ That notwithstanding, the Panel notes that Mr Said will require regular medical monitoring and that complications may be possible.²⁸

19. Third, in respect of Mr Said's ability to participate in the proceedings, the Panel concludes that, in light of its findings in respect of Mr Said's medical condition and his prognosis, at the end of his period of hospitalisation and return to the Detention Unit, Mr Said will have the capacity to participate in the proceedings.²⁹

²⁰ Panel's Report, ICC-01/14-01/21-660-SECRET-Anx, p. 3-4.

²¹ Panel's Report, ICC-01/14-01/21-660-SECRET-Anx, p. 19. *See also* pp 7-8.

²² Panel's Report, ICC-01/14-01/21-660-SECRET-Anx, p. 7.

²³ Panel's Report, ICC-01/14-01/21-660-SECRET-Anx, p. 6.

²⁴ Panel's Report, ICC-01/14-01/21-660-SECRET-Anx, pp 18-19. *See also* pp 5-6, 8-14, 16-17.

²⁵ Panel's Report, ICC-01/14-01/21-660-SECRET-Anx, pp 17, 19.

²⁶ Panel's Report, ICC-01/14-01/21-660-SECRET-Anx, p. 19.

²⁷ Panel's Report, ICC-01/14-01/21-660-SECRET-Anx, p. 19.

²⁸ Panel's Report, ICC-01/14-01/21-660-SECRET-Anx, p. 19.

²⁹ Panel's Report, ICC-01/14-01/21-660-SECRET-Anx, p. 19.

20. Last, in respect of whether any special measures or adjustments are necessary to address any medical conditions during the trial proceedings, the Panel finds that there is no need for special measures or adaptations during the trial, apart from the possibility of taking prescribed medication if required.³⁰

B. Prosecution's Submissions

21. The Prosecution submits that, based on the findings in the Panel's Report, the Chamber should conclude that Mr Said is fit to stand trial and the trial proceedings should resume in March 2024.³¹ In this regard, the Prosecution submits that 'Mr Said's current state of health renders him able to meaningfully exercise his fair trial rights including rights listed in article 67(1) of the Statute'.³²

22. Specifically, the Prosecution makes reference to the fact that the 'Panel's clinical examination of Mr Said established that Mr Said is well-oriented; that his general condition is preserved; that his prognosis is good and that his current state of health was stable.'³³ Similarly, the Prosecution points to the fact that '[REDACTED]'.³⁴

23. The Prosecution also refers to Mr Said's views which were conveyed to the Panel, noting that Mr Said 'informed the Panel that he feels in good shape; [REDACTED]; is autonomous and is able to function unaided.'³⁵ Similarly, the Prosecution also observes that Mr Said indicated a 'preference to resume trial in two to three months' time'.³⁶

24. Furthermore, the Prosecution also submits that any medical ailments still suffered by the accused are 'insufficient to prevent the trial of Mr Said resuming' and can be 'managed by pain medication'.³⁷ Moreover, the Prosecution notes that such ailments

³⁰ Panel's Report, ICC-01/14-01/21-660-SECRET-Anx, p. 20.

³¹ Prosecution's Submissions, ICC-01/14-01/21-664-SECRET, para. 2.

³² Prosecution's Submissions, ICC-01/14-01/21-664-SECRET, para. 21.

³³ Prosecution's Submissions, ICC-01/14-01/21-664-SECRET, para. 24 *referring to* Panel's Report, ICC-01/14-01/21-660-SECRET-Anx, pp 7, 17-19, 21.

³⁴ Prosecution's Submissions, ICC-01/14-01/21-664-SECRET, para. 24 *referring to* Panel's Report, ICC-01/14-01/21-660-SECRET-Anx, pp 7, 17.

³⁵ Prosecution's Submissions, ICC-01/14-01/21-664-SECRET, para. 27 *referring to* Panel's Report, ICC-01/14-01/21-660-SECRET-Anx, pp 6-7, 17.

³⁶ Prosecution's Submissions, ICC-01/14-01/21-664-SECRET, para. 27 *referring to* Panel's Report, ICC-01/14-01/21-660-SECRET-Anx, p. 6.

³⁷ Prosecution's Submissions, ICC-01/14-01/21-664-SECRET, para. 28.

‘were taken into account by the Panel when reaching its conclusion that Mr Said is fit to resume trial.’³⁸

25. Last, in respect of the date for the resumption of evidentiary hearings, the Prosecution proposes that the Chamber set a date to resume trial proceedings in March 2024.³⁹ In support of this date the Prosecution points to the fact that ‘Mr Said indicated that he will be in a position to resume trial in two or three months’ time’ and this ‘timeframe provides the Prosecution appropriate time to inform its witnesses of the resumption of trial.’⁴⁰

C. Defence’s Submissions

26. In the Defence’s Submissions, the Defence notes that in order to be fit to stand trial an accused must be able to exercise all his or her rights and that it is necessary to take into account the specificity of the medical situation of the accused person in order to ensure that the accused receives a fair trial before the Court which does not endanger his or her overall health.⁴¹ In this regard, the Defence submits that it is crucial to assess whether Mr Said is sufficiently physically and mentally recovered and what adjustments may be needed in order to allow him to attend and participate in hearings in good conditions which don’t impact his health.⁴²

27. The Defence notes that Mr Said returned to the Detention Unit on 21 November 2023 where he is closely monitored by the medical services.⁴³ In this respect, the Defence notes that special attention needs to be paid to his rehabilitation and that there are ongoing discussions with the Registry regarding measures to be put in place for Mr Said in the Detention Unit.⁴⁴ The Defence submits that despite Mr Said’s return to the Detention Unit medical issues continue to exist,⁴⁵ including [REDACTED],⁴⁶ and there is currently no physical and psychological rehabilitation plan in place for him.⁴⁷ That

³⁸ Prosecution’s Submissions, ICC-01/14-01/21-664-SECRET, para. 28 *referring to* Panel’s Report, ICC-01/14-01/21-660-SECRET-Anx, pp 6, 18-19.

³⁹ Prosecution’s Submissions, ICC-01/14-01/21-664-SECRET, para. 31.

⁴⁰ Prosecution’s Submissions, ICC-01/14-01/21-664-SECRET, para. 31.

⁴¹ Defence’s Submissions, ICC-01/14-01/21-665-SECRET, paras 2-3.

⁴² Defence’s Submissions, ICC-01/14-01/21-665-SECRET, para. 5.

⁴³ Defence’s Submissions, ICC-01/14-01/21-665-SECRET, para. 13.

⁴⁴ Defence’s Submissions, ICC-01/14-01/21-665-SECRET, paras 12-15.

⁴⁵ Defence’s Submissions, ICC-01/14-01/21-665-SECRET, paras 17-22.

⁴⁶ Defence’s Submissions, ICC-01/14-01/21-665-SECRET, paras 18, 20, 22.

⁴⁷ Defence’s Submissions, ICC-01/14-01/21-665-SECRET, para. 16.

notwithstanding, the Defence notes that meetings with the medical services have been held in this regard.⁴⁸ Furthermore, the Defence submits that just because Mr Said has been deemed fit to return to the Detention Unit does not mean that he has the physical and mental strength to participate in trial full time, adding that conditions in the Detention Unit may have an impact on Mr Said's health so as to affect his ability to participate at trial.⁴⁹ In short, the Defence avers that the question to be addressed is: under what conditions can the trial be resumed, given that Mr Said is still recovering and in detention.⁵⁰

28. In connection with the foregoing, the Defence submits that Mr Said must be able to participate effectively in the proceedings meaning that he must be able to participate actively in his own defence, which requires a sufficient level of energy.⁵¹ In this respect, the Defence avers that Mr Said has difficulty sitting for long periods of time, is often in pain and becomes tired quickly.⁵²

29. In respect of the Panel's Report, the Defence submits that it does not provide any useful information and there is nothing in the report to indicate that the Panel is aware of what Mr Said's participation at trial entails.⁵³ Specifically, the Defence posits that there is nothing in the report to indicate that the Panel considered how long Mr Said should participate at trial, how many hours he would have to be operational, what happens during a trial, how long he has to sit for or how he works with his Defence team, and consequently assessing what his abilities are in these respects.⁵⁴ The Defence avers that there is no indication in the Panel's Report that they attempted to evaluate Mr Said's capacity to participate in the trial and that the Panel's Report therefore constitutes a 'non-report'.⁵⁵

30. The Defence further submits that there are a number of problems with the evidence gathered from Mr Said himself, noting that the Panel did not ask him about

⁴⁸ Defence's Submissions, ICC-01/14-01/21-665-SECRET, para. 16.

⁴⁹ Defence's Submissions, ICC-01/14-01/21-665-SECRET, para. 28. *See also* paras 26-27.

⁵⁰ Defence's Submissions, ICC-01/14-01/21-665-SECRET, para. 29.

⁵¹ Defence's Submissions, ICC-01/14-01/21-665-SECRET, paras 35-38.

⁵² Defence's Submissions, ICC-01/14-01/21-665-SECRET, paras 37-38.

⁵³ Defence's Submissions, ICC-01/14-01/21-665-SECRET, para. 39.

⁵⁴ Defence's Submissions, ICC-01/14-01/21-665-SECRET, para. 40.

⁵⁵ Defence's Submissions, ICC-01/14-01/21-665-SECRET, paras 41-42.

the conduct of hearings and did not take into account Mr Said's conditions of detention in the Detention Unit.⁵⁶ Similarly, the Defence notes that the Panel misunderstood information Mr Said provided, namely that he has [REDACTED], and he never indicated that he would be able to resume trial without any adjustments.⁵⁷ Furthermore, the Defence avers that the Panel makes no mention of the need for physical rehabilitation and did not ask Mr Said about the psychological after effects of his illness.⁵⁸ The Defence submits that the Panel should have indicated to the Chamber that further expertise was required,⁵⁹ requested additional information,⁶⁰ spoken to medical staff treating Mr Said⁶¹ and that it is clear that it did not have sufficient experience regarding proceedings at the Court.⁶² In sum, the Defence submits that the Panel's conclusions lack reasoning and do not give a solid basis for the Chamber to take a decision regarding Mr Said's fitness to stand trial.⁶³

31. Taking the above into consideration, the Defence submits that, based on Mr Said's current state of health and the absence of information and measures in place to treat Mr Said's conditions in the context of his convalescence, the Chamber should defer ruling on Mr Said's fitness to resume trial on a full time basis and reassess the situation once a therapeutic plan and adjustments to the Detention Unit have been put in place.⁶⁴ The Defence considers that it would be prudent to allow a period of two or three months for this to occur.⁶⁵

32. In the alternative, should the Chamber decide to rule on fitness at this stage, the Defence submits that, in light of Mr Said's current state of health, the number of hearing days and the duration of sessions should be reduced to no more than two sessions per day and a maximum of three days per week.⁶⁶ In addition, the Defence submits that

⁵⁶ Defence's Submissions, ICC-01/14-01/21-665-SECRET, para. 44

⁵⁷ Defence's Submissions, ICC-01/14-01/21-665-SECRET, para. 45.

⁵⁸ Defence's Submissions, ICC-01/14-01/21-665-SECRET, paras 46-48.

⁵⁹ Defence's Submissions, ICC-01/14-01/21-665-SECRET, para. 49. *See also* para. 55.

⁶⁰ Defence's Submissions, ICC-01/14-01/21-665-SECRET, para. 50.

⁶¹ Defence's Submissions, ICC-01/14-01/21-665-SECRET, para. 51.

⁶² Defence's Submissions, ICC-01/14-01/21-665-SECRET, paras 54-55.

⁶³ Defence's Submissions, ICC-01/14-01/21-665-SECRET, paras 56-59.

⁶⁴ Defence's Submissions, ICC-01/14-01/21-665-SECRET, paras 60-61, 63.

⁶⁵ Defence's Submissions, ICC-01/14-01/21-665-SECRET, para. 62.

⁶⁶ Defence's Submissions, ICC-01/14-01/21-665-SECRET, paras 64-65.

there should be medical treatment available for Mr Said during hearings and that he should be able to take breaks in case of pain or other medical issues.⁶⁷

D. Victims' Submissions

33. In the Victims' Submissions, the CLRV avers that 'the Experts cast no doubt on Mr Said's ability to meaningfully exercise his fair trial rights' and that he is 'evidently fit to stand trial'.⁶⁸ In this regard, the CLRV indicates that there should be an 'expeditious resumption of the proceedings in the interest of both the victims and the Accused.'⁶⁹

34. However, the CLRV notes that, notwithstanding her view that Mr Said is fit to stand trial, she is 'mindful of his various pathologies and complications which resulted in a long period of hospitalisation, as well as the need for regular medical follow-ups.'⁷⁰ In this regard, the CLRV indicates that while she 'does not oppose, in principle, the adoption of measures or adjustments which would facilitate Mr Said's recovery while participating in the trial proceedings', she however, requests that the parties and participants 'remain fully informed of the reasons for such measures, where applicable, and be given an opportunity to discuss the merits thereof prior to their adoption.'⁷¹

III. APPLICABLE LAW

35. The Chamber recalls that in the Decision Appointing Experts it set out the applicable law in relation to fitness to stand trial.⁷² Specifically, the Chamber noted the following:

The concept of 'fitness to stand trial' must be interpreted in the light of the need to ensure that the accused receives a fair trial in the sense that, when the accused is unable to meaningfully exercise his or her procedural rights because of his or

⁶⁷ Defence's Submissions, ICC-01/14-01/21-665-SECRET, para. 65.

⁶⁸ Victims' Submissions, ICC-01/14-01/21-666-SECRET, para. 15.

⁶⁹ Victims' Submissions, ICC-01/14-01/21-666-SECRET, para. 15.

⁷⁰ Victims' Submissions, ICC-01/14-01/21-666-SECRET, para. 16.

⁷¹ Victims' Submissions, ICC-01/14-01/21-666-SECRET, para. 16.

⁷² Decision Appointing Experts, ICC-01/14-01/21-630-Red, paras 34-38.

her state of health, the trial cannot be fair.⁷³ In such circumstances the proceedings must therefore be adjourned until such obstacles cease to exist.⁷⁴

As held by other chambers of this Court, there are a number of relevant capacities which are necessary for the meaningful exercise of the accused's procedural rights.⁷⁵ These include, *inter alia*, the capacities to engage with and participate in trial proceedings and instruct counsel.⁷⁶

It is not required, however, that the aforementioned capacities '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'.⁷⁷

In connection with the foregoing, the question of whether an accused is fit to stand trial does not depend, in and of itself, on whether he or she has particular medical conditions, but whether he or she is able to effectively exercise his or her fair trial rights in the proceedings.⁷⁸

The Chamber further notes that, even where a medical examination is ordered pursuant to rule 135 of the Rules, the appointed experts are not required themselves to make a determination of an accused's fitness to stand trial.⁷⁹ Rather, such a determination remains within the exclusive responsibility of the Chamber, in view of its obligations under article 64(2) of the Statute.⁸⁰ Additionally, the

⁷³ Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision appointing experts for the purpose of a medical examination pursuant to Rule 135 of the Rules of Procedure and Evidence, 24 March 2021, [ICC-01/12-01/18-1006-Red](#), (the '*Al Hassan* Rule 135 Decision') para. 33; Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision on the Defence notice on Mr Al Hassan's unfitness to stand trial, 2 September 2020, [ICC-01/12-01/18-952-Red](#) (the '*Al Hassan* Decision on Defence notice of unfitness'), para. 33; 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](#) (the '*Ongwen* Decision Ordering a Medical Examination'), para. 7; 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, 2 November 2012, [ICC-02/11-01/11-286-Red](#), (the '*Gbagbo* Fitness Decision') para. 43; Trial Chamber I, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Decision on the fitness of Laurent Gbagbo to stand trial, 27 November 2015, [ICC-02/11-01/15-349](#) (the '*Second Gbagbo* Fitness Decision'), para. 33.

⁷⁴ [Al Hassan Rule 135 Decision](#), para. 33; [Al Hassan Decision on Defence notice of unfitness](#), para. 33; [First Gbagbo Fitness Decision](#), para. 43.

⁷⁵ [Al Hassan Rule 135 Decision](#), para. 33; [Al Hassan Decision on Defence notice of unfitness](#), para. 34; [Ongwen Decision Ordering a Medical Examination](#), para. 8; [First Gbagbo Fitness Decision](#), para. 50; [Second Gbagbo Fitness Decision](#), para. 35.

⁷⁶ [Al Hassan Decision on Defence notice of unfitness](#), para. 34; [Ongwen Decision Ordering a Medical Examination](#), para. 8; [First Gbagbo Fitness Decision](#), para. 50; [Second Gbagbo Fitness Decision](#), para. 35.

⁷⁷ [Al Hassan Rule 135 Decision](#), para. 35; [Al Hassan Decision on Defence notice of unfitness](#), para. 34; [Second Gbagbo Fitness Decision](#), para. 36.

⁷⁸ [Al Hassan Decision on Defence notice of unfitness](#), para. 36; [Ongwen Decision Ordering a Medical Examination](#), para. 13.

⁷⁹ [Al Hassan Rule 135 Decision](#), para. 36; 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](#), (the '*Gbagbo* Rule 135 Order'), para. 14.

⁸⁰ [Al Hassan Rule 135 Decision](#), para. 36; [Gbagbo Rule 135 Order](#), para. 14.

role of the parties and appointed medical experts in connection to the determination of whether an accused is fit to stand trial is better seen as assisting the Chamber in the discharge of its obligations in this regard.⁸¹

36. The Chamber sees no reason to depart from the aforementioned standards and adopts its findings in the Decision Appointing Experts for the purposes of the present decision.

IV. ANALYSIS

A. Determination on Mr Said's Fitness to Stand Trial

37. Before turning to an assessment of the Panel's findings, the Chamber will first address the Defence's submissions to the effect that the Panel's Report constitutes a 'non-report'.⁸²

38. First, the Chamber rejects the Defence's submissions that the Panel did not consider the modalities of Mr Said's participation in practice and what his abilities are in this respect.⁸³ The Chamber finds that the Defence's submissions in this regard are based on conjecture and misrepresent both the report itself and the circumstances in which the Panel carried out its assessment. The Panel clearly set out the medical information it had regard to,⁸⁴ consulted his treating physicians,⁸⁵ and conducted an in-depth, comprehensive medical examination of Mr Said,⁸⁶ noting, *inter alia*, what his physical capacities are⁸⁷ in order to make its finding that Mr Said is able to participate in the proceedings.⁸⁸

39. Second, the Chamber also rejects the Defence's submissions that the Panel should have indicated that further expertise was required.⁸⁹ The Chamber recalls that it explicitly instructed the Panel to inform the Chamber if it was of the view that more experts from other areas of medical expertise were needed in order to make a fully

⁸¹ [Al Hassan Rule 135 Decision](#), para. 36; [Ongwen Decision Ordering a Medical Examination](#), para. 11; [First Gbagbo Fitness Decision](#), para. 56.

⁸² See Defence's Submissions, ICC-01/14-01/21-665-SECRET, paras 39-59.

⁸³ See Defence's Submissions, ICC-01/14-01/21-665-SECRET, paras 39-40.

⁸⁴ See Panel's Report, ICC-01/14-01/21-660-SECRET-Anx, pp 3-6, 8-15.

⁸⁵ See Panel's Report, ICC-01/14-01/21-660-SECRET-Anx, pp 14-15.

⁸⁶ See Panel's Report, ICC-01/14-01/21-660-SECRET-Anx, pp 7-8.

⁸⁷ See Panel's Report, ICC-01/14-01/21-660-SECRET-Anx, pp 7-8, 17, 20.

⁸⁸ Panel's Report, ICC-01/14-01/21-660-SECRET-Anx, pp 19, 21.

⁸⁹ See Defence's Submissions, ICC-01/14-01/21-665-SECRET, paras 49

informed assessment of Mr Said's medical condition.⁹⁰ The Chamber notes that the Panel was clearly not of that view as it did not consider it necessary to avail itself of this option. Furthermore, the Chamber observes that the Panel is composed of qualified medical practitioners, with combined experience of conducting medical examinations in a judicial context and expertise in the fields of medicine relevant to Mr Said's medical conditions.⁹¹

40. Third, the Chamber further rejects the Defence's submission that the Panel should have requested additional information and did not have sufficient experience regarding proceedings at the Court.⁹² At the outset, the Chamber notes that it has already rejected similar arguments in the Decision on the Defence's Request to Provide Information to the Experts.⁹³ The Chamber recalls that it specifically instructed the Panel to assess Mr Said's ability to participate in proceedings before this Court.⁹⁴ The Chamber finds that the Defence makes a misplaced assumption that the Panel was not aware of what participation in proceedings before the Court entails, and rejects the Defence's implicit assertion that the Panel's positive finding in this regard is disingenuous. There is nothing to indicate that the Panel was not aware of what participation before the Court entails.

41. Accordingly, based on the foregoing, the Chamber rejects the Defence's submissions that the Panel's Report constitutes a 'non-report' and will rely on it for the purposes of determining whether Mr Said is fit to stand trial.

42. Turning to the substance of the Panel's Report, the Chamber recalls that it instructed the Panel to assess: (i) the medical condition of the accused; (ii) his prognosis; (iii) his ability to participate in the proceedings; and, (iv) whether any special

⁹⁰ Decision Appointing Experts, ICC-01/14-01/21-630-Red, para. 32. *See also* Decision Concerning Access to Medical Records, ICC-01/14-01/21-634-SECRET-Red-Corr, para. 4.

⁹¹ *See* Decision Appointing Experts, ICC-01/14-01/21-630-Red, paras 29-30; ICC-01/14-01/21-621-SECRET-Anx1, pp 5-6, 8; ICC-01/14-01/21-621-SECRET-Anx2, p. 44.

⁹² *See* Defence's Submissions, ICC-01/14-01/21-665-SECRET, paras 50-51, 54-55.

⁹³ Decision on the Defence's Request to Provide Information to the Experts, ICC-01/14-01/21-648-SECRET, paras 18-21.

⁹⁴ Decision Appointing Experts, ICC-01/14-01/21-630-Red, para. 39.

measures or adjustments are necessary to address any medical condition of the accused during the trial proceedings.⁹⁵

43. At the outset, the Chamber emphasises that the question before it is whether Mr Said's fitness to stand trial is impaired. Whilst the Chamber takes note of the Defence's submissions regarding Mr Said's current state of health,⁹⁶ the Chamber observes that the Panel's independent and objective assessment is clear and unequivocal in the sense that it found that the accused's medical condition does not inhibit his ability to participate in the proceedings, and once Mr Said returns to the Detention Unit⁹⁷ he will have the capacity to participate in the proceedings.⁹⁸ In addition, the Chamber finds that the fact that the Panel has not recommended any special measures or adjustments⁹⁹ is significant for the purposes of determining whether Mr Said can participate in the proceedings.

44. As noted above, the Chamber finds no reason to doubt the Panel's findings. Although Mr Said must continue to be monitored, as acknowledged by the Panel,¹⁰⁰ in light of the aforementioned considerations, the Chamber is satisfied that Mr Said's current state of health does not render him unable to meaningfully exercise his procedural rights pursuant to article 67(1) of the Statute. In this regard, the Chamber is satisfied that Mr Said is able to attend hearings, follow and understand the nature of the proceedings and instruct his counsel. Accordingly, the Chamber finds that Mr Said is fit to stand trial.

45. The Panel concluded that no special measures or adaptations are required for Mr Said's participation with the exception of access to medication.¹⁰¹ Therefore, at present, the medical information before the Chamber suggests that special measures are not necessary to ensure Mr Said's participation in his trial. Nonetheless, the Chamber has taken due note of the Defence's submissions regarding the ongoing discussions with the medical services regarding Mr Said's future physical and psychological treatment

⁹⁵ Decision Appointing Experts, ICC-01/14-01/21-630-Red, para. 39.

⁹⁶ See Defence's Submissions, ICC-01/14-01/21-665-SECRET, paras 12, 14-22.

⁹⁷ The Chamber notes that Mr Said has now returned to the Detention Unit.

⁹⁸ See Panel's Report, ICC-01/14-01/21-660-SECRET-Anx, p. 19.

⁹⁹ See Panel's Report, ICC-01/14-01/21-660-SECRET-Anx, p. 20.

¹⁰⁰ See Panel's Report, ICC-01/14-01/21-660-SECRET-Anx, p. 19.

¹⁰¹ See Panel's Report, ICC-01/14-01/21-660-SECRET-Anx, p. 20.

plan.¹⁰² The Chamber strongly encourages the Medical Officer and Registry to finalise this treatment plan as soon as possible and, bearing in mind regulation 103 of the Regulations and regulation 155 of the Regulations of the Registry, to report to the Chamber, as soon as possible and no later than 12 January 2024, should adjustments to the sitting schedule be required.

B. Scheduling of the proceedings

46. The Chamber recalls that the Prosecution indicated that it required a period of six weeks to two months' notice before being able to resume evidentiary hearings.¹⁰³ On 10 November 2023, the Chamber informed the parties and participants that, in light of the procedural calendar set out in the Decision Appointing Experts, it 'expects the Parties, participants and the Registry to be prepared to resume evidentiary hearings as soon as possible if the Chamber should determine that Mr Said is fit to stand trial.'¹⁰⁴ The Chamber notes that the Prosecution's position now is that evidentiary hearings should resume in March 2024 as this will give it 'appropriate time to inform its witnesses'.¹⁰⁵

47. The Chamber finds that the Prosecution's reasons for wanting to resume trial proceedings in March 2024 lack justification and it has not provided proper substantiation as to why such a lengthy period of time is required for it to 'inform its witnesses'. In this regard, in line with its obligation to ensure the expeditiousness of the proceedings,¹⁰⁶ the Chamber finds that evidentiary hearings must resume as soon as possible and before March 2024.

48. Accordingly, based on the foregoing, the Chamber gives notice that it intends for evidentiary hearings to resume on 29 January 2024. The Chamber finds that this gives sufficient time for the parties and participants to prepare for the resumption of evidentiary hearings. In addition, the Chamber also expects the Registry and the relevant medical services to finalise Mr Said's ongoing treatment plan so that this can

¹⁰² See Defence's Submissions, ICC-01/14-01/21-665-SECRET, paras 14-16, 27.

¹⁰³ ICC-01/14-01/21-T-047-SECRET-ENG, p. 7.

¹⁰⁴ Email from the Chamber to the parties, participants and the Registry, dated 10 November 2023, at 16:03.

¹⁰⁵ Prosecution's Submissions, ICC-01/14-01/21-664-SECRET, para. 31.

¹⁰⁶ Article 64(2) of the Statute.

be factored into the future scheduling of hearings, if required. At present, the Chamber gives notice that it intends to initially sit for a period of two weeks from the 29 January 2024, a more detailed schedule of hearings for 2024 will be released in due course.

C. Classification of the Record

49. In light of the fact that: (i) Mr Said's health has stabilised; (ii) the public are aware that Mr Said has been unwell; (iii) Mr Said has consented to sharing more information with the parties and participants regarding his medical condition; and (iv) the Chamber has found that he is fit to stand trial, the Chamber finds that part of the record now requires reclassification.

50. At the outset, the Chamber finds that the following orders and decisions can be made public and orders the Registry to reclassify them accordingly:

- ICC-01/14-01/21-593-SECRET-Exp
- ICC-01/14-01/21-603-SECRET
- ICC-01/14-01/21-616-SECRET
- ICC-01/14-01/21-618-SECRET-Red
- ICC-01/14-01/21-634-SECRET-Red-Corr
- ICC-01/14-01/21-648-SECRET

51. In respect of the remainder of the record, it is the Chamber's intention to downgrade the classification of a number of the filings from SECRET to confidential. If the Defence is of the view that certain filings (and annexes) should remain SECRET it is ordered to identify them and inform the Chamber of the reasons why this is necessary.

52. In addition, the Chamber also is of the view that, to the extent possible, there should be public redacted versions of the parties' and participants' filings. In order to achieve this, the Chamber considers it prudent for the Defence to first review all its filings and submit public redacted versions or request reclassification thereof (as appropriate). At this juncture, the Chamber authorises the continued redaction of all specific medical information and any information relating to Mr Said's privileged communications with his doctors and other medical practitioners. Should the Defence

wish to add any additional redactions that do not fall into the above categories, it must notify the Chamber and justify why those redactions are required in one consolidated filing. Thereafter, the Chamber will determine how to proceed with the filings of the Prosecution, CLRV and Registry.

53. Last, the Chamber notes that the deadline for any request for leave to appeal the present decision will fall during the winter recess. Accordingly, the Chamber finds it necessary in the present circumstances to extend the deadline for requests for leave to appeal, and therefore any request for leave to appeal the present decision must be filed no later than 11 January 2024.

FOR THESE REASONS, THE CHAMBER HEREBY

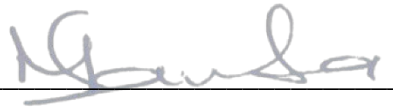
FINDS that Mr Said is fit to stand trial;

GIVES NOTICE that it intends for evidentiary hearings to resume on 29 January 2024;

ORDERS the Registry and Medical Officer to report to the Chamber, as required, in line with paragraph 45 above;

ORDERS the Registry to reclassify the filings set out in paragraph 50 above;

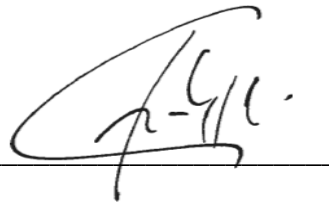
ORDERS the Defence to proceed in line with paragraphs 51 and 52 above.



Judge Miatta Maria Samba
Presiding Judge



Judge María del Socorro Flores Liera



Judge Sergio Gerardo Ugalde Godínez

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

Dated 15 December 2023

At The Hague, The Netherlands