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**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/14-01/21

Date: 8 March 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

SECRET

Decision on the Prosecution's Request for Additional Information

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

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for Victims****The Office of Public Counsel
for the Defence****States Representatives****Amicus Curiae****REGISTRY**

Registrar

Mr Peter Lewis

Counsel Support Section**Victims and Witnesses Unit****Detention Section****Victims Participation and
Reparations Section****Other**

TRIAL CHAMBER VI of the International Criminal Court, in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, having regard to articles 42(1), 54(1)(b) and 64 of the Rome Statute (the ‘Statute’), and rule 135 of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Prosecution’s Request for Additional Information’.

I. PROCEDURAL HISTORY

1. On 7 February 2023, the Chamber held a status conference in closed session.¹ During the status conference, the Registry informed the Chamber, parties and participants, *inter alia*, that Mr Said is 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
2. On 20 February 2023, the Office of the Prosecutor (the ‘Prosecution’) filed a request for additional information regarding the health of the accused or, in the alternative, reclassification as *ex parte*, available only to the Prosecution and the Defence, of any information on the accused’s health already submitted on the record of the case (the ‘Request’).³
3. On 3 March 2023, the Defence filed a response to the Request, submitting that the Request should be rejected (the ‘Response’).⁴
4. On 3 March 2023, the Common Legal Representative of Victims (the ‘CLR’), also filed a response to the Request, wherein she supported the Request and submitted, *inter alia*, that the Chamber should order a medical examination of the accused (the ‘Victims’ Submissions’).⁵

¹ Transcript of hearing, 7 February 2023, ICC-01/14-01/21-T-047-SECRET-ENG.

² ICC-01/14-01/21-T-047-SECRET-ENG, p. 5, lines 3-8.

³ Prosecution’s request for additional information or in the alternative for reclassification, 20 February 2023, ICC-01/14-01/21-597-SECRET, paras 1-2.

⁴ Réponse de la Défense à la « Prosecution’s request for additional information or in the alternative for reclassification » (ICC-01/14-01/21-597-SECRET), 3 March 2023, ICC-01/14-01/21-600-SECRET-Exp. A SECRET redacted version was filed simultaneously (ICC-01/14-01/21-600-SECRET-Red).

⁵ Common Legal Representative of Victims’ observations on the “Prosecution’s request for additional information or in the alternative for reclassification”, 3 March 2023, ICC-01/14-01/21-599-SECRET.

5. On 6 March 2023, the Defence filed a response to the Victims' Submissions (the 'Defence Response to Victims' Submissions').⁶

II. SUBMISSIONS

6. In the Request, the Prosecution submits that it has a right to a fair trial⁷ and that it 'needs to be provided with sufficient information not only to make informed submissions to the Chamber on a matter that significantly affects the expeditious conduct of the proceedings, but also to assess whether this outcome is justified and proportionate in the circumstances.'⁸ Furthermore, the Prosecution avers that the lack of information impacts its 'ability to carry out its statutory mandate to prosecute effectively as per articles 42(1) and 54(1)(b) of the Statute'.⁹

7. The Prosecution also makes reference to rule 135 of the Rules and submits that it has a right to request independent expertise to assist in the determination of the accused's fitness to stand trial,¹⁰ and that in order to make its determination on this issue 'it is imperative that the Prosecution be provided with sufficient information on the medical situation.'¹¹ The Prosecution submits that the information it has been provided with is insufficient to assess whether it justifies an extensive suspension of proceedings, and that the current suspension has an impact on Prosecution resources and the legitimate expectations of victims and witnesses.¹²

8. Last, the Prosecution submits that while the accused has a right to privacy, this right is not absolute and that the right of confidentiality concerning a person's medical condition 'has to be balanced with other fundamental rights enshrined in the Statute'.¹³

⁶ Réponse de la Défense aux nouvelles demandes formulées par la Représentante légale des victimes dans ses « observations on the "Prosecution's request for additional information or in the alternative for reclassification" (ICC-01/14-01/21- 597-SECRET) » (ICC-01/14-01/21-599-Conf) ou alternativement, demande d'autorisation de répliquer., 6 March 2023, ICC-01/14-01/21-602-SECRET-Exp. A SECRET redacted version was filed simultaneously (ICC-01/14-01/21-602-SECRET-Red).

⁷ Request, para. 7.

⁸ Request, para. 8.

⁹ Request, para. 8.

¹⁰ Request, para. 9.

¹¹ Request, para. 9.

¹² Request, para. 10.

¹³ Request, para. 11.

9. Accordingly, the Prosecution requests ‘additional and adequate information pertaining to the health condition of Mr SAID in the form of medical records and/or/reports from the Registry.’¹⁴ In the alternative, the Prosecution requests the reclassification as *ex parte*, available only to the Prosecution and the Defence, of any information on the accused’s health already submitted on the record of the case.¹⁵

10. In the Response, the Defence submits that at the status conference on 7 February 2023, the Chamber clearly indicated to the Prosecution and the CLRV that there is no need at this stage for them to have more information about Mr Said’s health and that there was no need to conduct an assessment under rule 135 of the Rules.¹⁶ In this regard, the Defence notes that the Request essentially constitutes a request for reconsideration of the Chamber’s earlier decision.¹⁷

11. The Defence further avers that Mr Said’s state of health is inherently confidential, that he has a right to privacy, and there is no reason to share more information with the Prosecution.¹⁸ The Defence notes the factual circumstances have not changed since the status conference on 7 February 2023, making reference to the Registry’s oral submissions to the effect that Mr Said is unable to participate in hearings due to medical reasons, recovery will likely take a period of six months, and will need to be reassessed after that time.¹⁹

12. Last, the Defence submits that the authority relied upon by the Prosecution in support of the Request does not apply in the present instance.²⁰

13. In the Victims’ Submissions, the CLRV supports the Request and requests that the relevant information also be shared with her.²¹ She further submits that Mr Said’s fitness to stand trial is an issue in the current situation and that the Chamber should order a medical examination of him pursuant to rule 135 of the Rules, and allow the

¹⁴ Request, para. 13.

¹⁵ Request, para. 13.

¹⁶ Response, para. 21.

¹⁷ Response, para. 22.

¹⁸ Response, paras 25-31.

¹⁹ Response, para. 31.

²⁰ Response, paras 33-40.

²¹ Victims’ Submissions, para. 15, p. 13.

parties and participants to submit observations on the medical report.²² The CLRV makes reference to article 64 of the Statute, noting that the Chamber has a duty to ensure that the trial is fair and expeditious and the Chamber can only adjourn the trial if it is satisfied that the accused is unfit to stand trial.²³

14. The CLRV further claims that '[i]f, following a medical examination, the Chamber were to conclude that there are any medical conditions which would negatively impact Mr Saïd's ability to meaningfully exercise his fair trial rights, it should first determine whether such an impact can be mitigated by putting in place practical arrangements, such as the possibility for the accused to follow the proceedings via video-link.'²⁴ Last, the CLRV states that the Chamber's decision 'to adjourn the trial for such a protracted period of time is manifestly unsound' and issued in 'ignorance of relevant information', and 'she believes that the Chamber should be minded to reconsider its decision to adjourn the trial.'²⁵

15. In the Defence Response to Victims' Submissions, the Defence submits that the CLRV in the Victims' Submissions makes three independent requests which the Defence has a right to respond to.²⁶ First, the Defence avers that the CLRV has no standing to request an independent expert report pursuant to rule 135 of the Rules and thus it should be rejected.²⁷ Second, the Defence submits the CLRV has no standing to request the Chamber to reconsider its decision to not request an expert report before adjourning hearings and it should therefore be rejected.²⁸ Last, the Defence submits that the reasons as to why the Prosecution should not receive the requested information apply all the more so to the CLRV, who is not a party to the proceedings, and accordingly the Chamber should similarly reject the CLRV's request in this respect.²⁹

²² Victims' Submissions, paras 2-3.

²³ Victims' Submissions, paras 10-12.

²⁴ Victims' Submissions, para. 22.

²⁵ Victims' Submissions, para. 23.

²⁶ Defence Response to Victims' Submissions, paras 8, 10.

²⁷ Defence Response to Victims' Submissions, paras 12-24.

²⁸ Defence Response to Victims' Submissions, paras 25-40.

²⁹ Defence Response to Victims' Submissions, para. 41.

III. ANALYSIS

16. For the reasons that follow, the Chamber finds that the Request must be rejected in its entirety.

17. First, the Chamber finds that the statutory provisions relied upon by the Prosecution in support of the Request, in particular articles 42(1), 54(1)(b), 64(3)(c) and 64(6)(d) of the Statute cannot, in the present instance, serve as any specific basis for disclosure of the information which the Prosecution seeks. Furthermore, the Chamber is fully cognisant of its functions and powers under article 64 of the Statute and, in present circumstances, does not need to be reminded of its responsibilities regarding the fairness and expeditiousness of these proceedings.

18. Second, in respect of the Prosecution's and CLRV's submissions with respect to the accused's fitness to stand trial, the Chamber assures the parties and participants that it is aware of rule 135 of the Rules, which provides that the Chamber has the discretion to order medical, psychiatric or psychological examination of the accused at its own initiative or at the request of a party. The Chamber recalls that the parties and participants already raised this issue, as well as the potential for Mr Said to be present through alternative means such as video-link, during the recent status conference.³⁰ At that time, the Chamber determined that it would be premature to enter into considerations of fitness to stand trial and the conditions under which attendance could be assured given Mr Said's state of health.³¹ That position remains unchanged. For the avoidance of all doubt, this means that there is no possibility for the trial to proceed at present given Mr Said's state of health. In this regard, submissions from the parties and participants and an independent medical report on this issue have no potential to assist in furthering the matter at this juncture.

19. Last, whilst the Chamber is mindful of the expectations of victims and witnesses in this case, this must be balanced with the accused's right to privacy and medical secrecy. In determining how to strike this balance the Chamber is fully aware of the need to ensure that the proceedings are conducted fairly and expeditiously, bearing in

³⁰ ICC-01/14-01/21-T-047-SECRET-ENG, p. 6, lines 9-21; p. 8, lines 23-24; p. 9, lines 18-24.

³¹ ICC-01/14-01/21-T-047-SECRET-ENG, p. 7, lines 5-8; p. 10, lines 1-8; p. 13, lines 14-15.

mind the parties' and participants' ability to plan their respective cases and the fact that Mr Said has not consented to disclosure of his medical information.

20. Accordingly, in the Chamber's assessment, the circumstances at present do not require any further information to be disclosed. However, the Chamber reassures the parties and participants that it continues to closely monitor the situation, will inform them sufficiently in advance of any relevant developments, and will take any necessary steps concerning the resumption of the trial as soon as the circumstances concerning Mr Said's health so permits.

FOR THESE REASONS, THE CHAMBER HEREBY

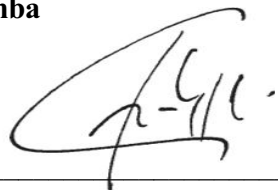
REJECTS the Request.



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 8 March 2023

At The Hague, The Netherlands