

Pursuant to Trial Chamber VI's decision ICC-01/14-01/21-667-Red, dated 15 December 2023, this document is reclassified as "Public"

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: **ICC-01/14-01/21**
Date: **17 November 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 Defence's Request to Provide Information to the Experts

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

The Office of the Prosecutor

Mr Karim A. A. Khan
Ms Holo Makwaia

Counsel for the Defence

Ms Jennifer Naouri
Mr Dov Jacobs

Legal Representatives of Victims

Ms Sarah Pellet

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

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Mr Harry Tjonk
Ms Michele Churchley

**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 64(2) and 67(1) of the Rome Statute (the 'Statute'), and regulation 44 of the Regulations of the Court issues this 'Decision on the Defence's Request to Provide Information to the Experts'.

I. PROCEDURAL HISTORY

1. On 13 August 2023, the Chamber issued the 'Decision Appointing Experts for the Purpose of Medical Examination pursuant to Rule 135 of the Rules of Procedure and Evidence' (the 'Decision Appointing Experts').¹ Therein the Chamber appointed Dr Haddad and Dr Bevers (hereinafter 'the Panel') to medically examine the accused.²
2. On 24 August 2023, the Chamber ordered the Registry to provide the Panel with all currently available medical information regarding Mr Said.³
3. On 10 November 2023, the Chamber informed the parties and participants that Mr Said is scheduled to be examined by the Panel on 17 November 2023.⁴
4. On 13 November 2023, the Defence requested that specific information be given to the Panel in order for it to be able to make an informed assessment of Mr Said and determine whether any special measures are required to preserve his health during the trial (the 'Request').⁵

¹ 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 (the 'Decision Appointing Experts'). (A SECRET *ex parte* version and a SECRET confidential version were filed on 14 August 2023 - ICC-01/14-01/21-630-SECRET-Exp; ICC-01/14-01/21-620-SECRET-Red respectively)

² Decision Appointing Experts, ICC-01/14-01/21-630-Red, paras 31, 39.

³ 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 2023 - ICC-01/14-01/21-624-SECRET-Exp).

⁴ Email from the Chamber to the Parties and participants, dated 10 November 2023 at 16:03.

⁵ Version secrète expurgée de la « Demande de communication aux experts d'éléments d'information indispensables portant sur la spécificité de ce que recouvre concrètement la participation de l'accusé au procès devant la Cour Pénale Internationale pour leur permettre de remplir de manière informée leur mission d'évaluation de l'aptitude de Monsieur Said et pour déterminer si des mesures spéciales ou d'aménagement sont nécessaires pour préserver l'état de santé de Monsieur Said pendant le procès », 13 November 2023, ICC-01/14-01/21-642-SECRET-Red. (the 'Request'). (A SECRET *ex parte* version was filed simultaneously - ICC-01/14-01/21-642-SECRET-Exp)

5. On 17 November 2023, the Office of the Prosecutor (the 'Prosecution') and Common Legal Representative of Victims (the 'CLR') filed responses to the Request (the 'Response'⁶ and 'Victims' Response'⁷ respectively).

II. SUBMISSIONS

6. In the Request, the Defence submits that it is crucial that the Panel be informed of the specificity of the procedure before the Court because it differs to that of domestic courts.⁸ In this regard, the Defence makes reference to the fact that trials before the Court typically take place over a longer period of time compared with national systems.⁹ Similarly, the Defence avers that it is useful for the Panel to be aware that trials at the Court are usually organised in blocks of hearings,¹⁰ considering that it may be unfamiliar with international criminal proceedings.¹¹

7. The Defence submits that Mr Said wishes to resume proceedings as soon as his medical condition permits but he is concerned about resuming in the immediate or near future, especially if the hearings would impose heavy physical strains on him.¹² The Defence points out, in this regard, that participating in trial proceedings is both physically and cognitively demanding.¹³ Accordingly, the Defence avers that it is important for the Panel to know in what context Mr Said's recovery will progress in order for it to prepare a report which is useful for the parties and the Chamber, particularly in respect to the discussion of any potential adaptations to proceedings.¹⁴

⁶ Prosecution's response to Defence request ICC-01/14-01/21-632-SECRET-Red, 17 November 2023, ICC-01/14-01/21-645-SECRET (the 'Response').

⁷ Victims' response to the "Version secrète expurgée de la 'Demande de communication aux experts d'éléments d'information indispensables portant sur la spécificité de ce que recouvre concrètement la participation de l'accusé au procès devant la Cour Pénale Internationale pour leur permettre de remplir de manière informée leur mission d'évaluation de l'aptitude de Monsieur Said et pour déterminer si des mesures spéciales ou d'aménagement sont nécessaires pour préserver l'état de santé de Monsieur Said pendant le procès'" (ICC-01/14-01/21-642-SECRET-Red), 17 November 2023, ICC-01/14-01/21-644-SECRET (the 'Victims' Response').

⁸ Request, ICC-01/14-01/21-642-SECRET-Red, paras 8-9.

⁹ Request, ICC-01/14-01/21-642-SECRET-Red, paras 10-11.

¹⁰ Request, ICC-01/14-01/21-642-SECRET-Red, para. 12.

¹¹ Request, ICC-01/14-01/21-642-SECRET-Red, paras 14-15.

¹² Request, ICC-01/14-01/21-642-SECRET-Red, para. 17.

¹³ Request, ICC-01/14-01/21-642-SECRET-Red, paras 17-18.

¹⁴ Request, ICC-01/14-01/21-642-SECRET-Red, paras 19-20.

8. With this in mind, the Defence submits that the following information should be provided to the Panel: (i) the fact that the trial will last at least several months;¹⁵ (ii) that hearings are typically organised in blocks and divided into three, one hour and half sessions each day;¹⁶ (iii) the scope of the right to instruct counsel, including what the right specifically entails, how meetings with counsel are typically organised, and what access Mr Said has had to counsel in recent months;¹⁷ (iv) Mr Said's role during hearings;¹⁸ (v) Mr Said's conditions during hearings;¹⁹ and (vi) Mr Said conditions of detention at the Detention Unit.²⁰

9. Last, the Defence submits that, based on the foregoing, the Panel should be provided with a copy of the Request in order to provide it with the information the Defence deems necessary for it to fulfil its mandate.²¹

10. In the Response, the Prosecution submits that the issues raised in the Request are premature because the Chamber is yet to receive the Panel's report(s) and the findings of the ordered medical examination.²² Further in this respect, the Prosecution avers that it is unable to make meaningful submissions due to a lack of information regarding Mr Said's state of health.²³

11. The Prosecution notes that the Chamber is cognisant that the health and recovery period of the accused was to be factored during the medical assessment of Mr Said and the instructions given to the experts are clear.²⁴ Similarly, the Prosecution submits that the assertions by the Defence regarding the qualifications of the Panel are misplaced, noting that the Panel was appointed after the parties and participants had made observations, which were considered by the Chamber.²⁵

¹⁵ Request, ICC-01/14-01/21-642-SECRET-Red, paras 21-23.

¹⁶ Request, ICC-01/14-01/21-642-SECRET-Red, paras 24-27.

¹⁷ Request, ICC-01/14-01/21-642-SECRET-Red, paras 28-35.

¹⁸ Request, ICC-01/14-01/21-642-SECRET-Red, paras 36-37.

¹⁹ Request, ICC-01/14-01/21-642-SECRET-Red, para. 38.

²⁰ Request, ICC-01/14-01/21-642-SECRET-Red, paras 39-48.

²¹ Request, ICC-01/14-01/21-642-SECRET-Red, p. 13.

²² Response, ICC-01/14-01/21-645-SECRET, para. 2.

²³ Response, ICC-01/14-01/21-645-SECRET, para. 2.

²⁴ Response, ICC-01/14-01/21-645-SECRET, para. 4.

²⁵ Response, ICC-01/14-01/21-645-SECRET, para. 4.

12. The Prosecution submits that the issues raised by the Defence in respect of (i) scheduling of the proceedings; (ii) detention matters; (iii) exercise of procedural rights; and (iv) languages during the proceedings, can all be addressed by the Chamber after hearings from the parties and the Registry (as appropriate).²⁶

13. The Prosecution further recalls, *inter alia*, that the Chamber ordered the Registry to provide all necessary assistance to the Panel in order for it to undertake the examination of Mr Said, including by providing his medical record, all reports by the Medical Officer, his detention record, as well as relevant filings.²⁷

14. Last, the Prosecution submits that the Defence will have an opportunity to address the Chamber once the Panel's report has been filed to ensure that Mr Said's medical condition is factored into its determination regarding scheduling and any special measures.²⁸

15. In the Victims' Response, the CLRV reiterates that the question of Mr Said's fitness to stand trial is the key issue to be determined by the Chamber and Mr Said's inability to physically attend hearings over the past months 'does not automatically mean that he is unfit to stand trial'.²⁹ In this regard, the CLRV submits that 'what needs to be assessed by the Panel is whether Mr Said's health issues affect his ability to, *inter alia*, understand the conduct, purpose and possible consequences of the trial proceedings, instruct counsel and follow trial proceedings.'³⁰

16. Furthermore, the CLRV makes reference to the Decision Appointing Experts, highlighting that the appointed experts are not required themselves to make a determination of Mr Said's fitness to stand trial, but rather assist the Chamber in the discharge of its obligation in this regard.³¹ The CLRV notes that, for this purpose, the Panel has been provided with all available information relating to Mr Said's health and the Chamber specifically appointed Dr Haddad to the panel given his experience of

²⁶ Response, ICC-01/14-01/21-645-SECRET, paras 5-11, 13.

²⁷ Response, ICC-01/14-01/21-645-SECRET, para. 12.

²⁸ Response, ICC-01/14-01/21-645-SECRET, para. 14.

²⁹ Victims' Response, ICC-01/14-01/21-644-SECRET, para. 19.

³⁰ Victims' Response, ICC-01/14-01/21-644-SECRET, para. 19.

³¹ Victims' Response, ICC-01/14-01/21-644-SECRET, para. 21 *referring to the* Decision Appointing Experts, para. 38.

conducting medical examinations in a judicial context.³² Accordingly, the CLRV submits that there is no reason to question the Panel's capacity to assess Mr Said's ability to participate in the proceedings and whether any special measures are required to address any medical condition during the proceedings.³³

17. Last, the CLRV notes that, should it be required, the Panel can inform the Registry, who can assist the Panel in obtaining additional information, given that it is in the best position to provide the Panel with neutral and objective information.³⁴ In this regard, the CLRV submits that the Panel should not be provided with submissions from the parties or participants, in line with the Chamber's instruction to refrain from any contact with the Panel in order to maintain its impartiality.³⁵ Accordingly, the CLRV posits that 'there is no need, nor would it be appropriate in light of the Panel's required impartiality, for the Experts to be provided with the Defence Request' and the Request should be rejected.³⁶

III. ANALYSIS

18. The Chamber recalls that in its Decision Appointing Experts it instructed the Panel to report on, *inter alia*, Mr Said's ability to participate in the proceedings and whether any special measures or adjustments are necessary.³⁷ The Chamber finds that it is for the Panel to determine whether it requires further information or if further expertise is required in order to make a fully informed assessment of Mr Said.³⁸ The Chamber notes that the Panel has been provided with all currently available medical information, which Mr Said has himself received, and it will conduct an in-person, physical examination of the accused.

19. In addition, the Chamber recalls that, in the Decision Appointing Experts, it directed the Registry to provide all necessary assistance to the Panel.³⁹ The Chamber observes, in this respect, that the Registry has been liaising with and assisting the Panel

³² Victims' Response, ICC-01/14-01/21-644-SECRET, paras 21-22.

³³ Victims' Response, ICC-01/14-01/21-644-SECRET, para. 23.

³⁴ Victims' Response, ICC-01/14-01/21-644-SECRET, para. 24.

³⁵ Victims' Response, ICC-01/14-01/21-644-SECRET, para. 24.

³⁶ Victims' Response, ICC-01/14-01/21-644-SECRET, para. 26.

³⁷ Decision Appointing Experts, ICC-01/14-01/21-630-Red, para. 39.

³⁸ See Decision Appointing Experts, ICC-01/14-01/21-630-Red, para. 32.

³⁹ Decision Appointing Experts, ICC-01/14-01/21-630-Red, para. 42.

in order to facilitate the medical examination of the accused and should the Panel have any questions, it may communicate with the Registry, as appropriate.

20. The Chamber further notes that it is ultimately for the Chamber to make the determination on Mr Said's participation in proceedings and what special measures (if any) are to be adopted, not the Panel.⁴⁰ For this purpose, the Chamber finds that it is not necessary for the Panel to be informed in the abstract as to the nature of proceedings before the Court and the specific details regarding Mr Said's participation at trial and his conditions of detention, which are matters that the Chamber can take into consideration, as necessary, in determining what modalities may be required for the purposes of resuming hearings.

21. Last, the Chamber notes that the Panel's report provides only one component relevant to the Chamber's assessment of whether Mr Said is fit to stand trial and the potential resumption of proceedings. In this respect, the Chamber recalls that the parties and participants will have the opportunity to make submissions following receipt of the Panel's report and can make submissions on any matter which they wish the Chamber to consider,⁴¹ including any specific measures/modalities to be adopted for the purposes of the resumption of hearings.

⁴¹ See Decision Appointing Experts, ICC-01/14-01/21-630-Red, para. 50.

FOR THESE REASONS, THE CHAMBER HEREBY

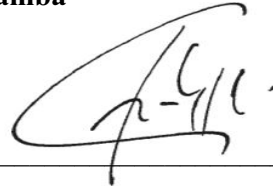
REJECTS the Request.



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 17 November 2023

At The Hague, The Netherlands