

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: 13 June 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**

**Order pursuant to rule 135 of the Rules of Procedure and Evidence**

Order 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**

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**Registrar**

Mr Osvaldo Zavala Giler

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

Mr Harry Tjonk

**Victims Participation and  
Reparations Section**

**Other**

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**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) 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, and regulation 156 of the Regulations of the Registry, issues this ‘Order pursuant to rule 135 of the Rules of Procedure and Evidence’.

## **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.<sup>1</sup>

2. 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 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.<sup>2</sup>

3. On 8 March 2023, the Chamber rejected a request by the Prosecution for further information regarding the health of the accused.<sup>3</sup> Therein the Chamber reiterated that there was ‘no possibility for the trial to proceed’ given Mr Said’s state of health and it was ‘premature to enter into considerations of fitness to stand trial’.<sup>4</sup> However, the Chamber reassured the parties and participants that it would continue ‘to closely monitor the situation’ in respect of Mr Said’s health.<sup>5</sup>

4. On 12 June 2023, following a period in which the Chamber received periodic updates from the Medical Officer at the Detention Centre regarding Mr Said’s health, with his consent, the Registry filed a report from the Medical Officer indicating that

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

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

<sup>3</sup> Decision on the Prosecution’s Request for Additional Information, 8 March 2023, ICC-01/14-01/21-603-SECRET (the ‘Decision on Prosecution’s Request for Additional Information’).

<sup>4</sup> Decision on Prosecution’s Request for Additional Information, para. 18.

<sup>5</sup> Decision on the Prosecution’s Request for Additional Information, para. 20.

Mr Said had ceased to give his consent for his medical information to be disclosed to the Chamber.<sup>6</sup>

## II. ANALYSIS

5. The Chamber recalls that, pursuant to article 64 of the Statute, it has a responsibility to ensure that the trial is fair and expeditious and conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses. The Chamber further recalls that it may, for any reason, order a medical, psychiatric or psychological examination of the accused pursuant to rule 135 of the Rules.

6. The Chamber notes that the proceedings have been adjourned for a significant period of time due to the health of the accused, but that it has been kept up to date by the Medical Officer regarding Mr Said's prognosis. The Chamber finds that the situation has now changed because it is no longer receiving information from the Medical Officer regarding Mr Said's health. As a result, the Chamber is not in possession of information that would allow it to determine whether the proceedings should continue to be adjourned. Therefore, in order for the Chamber to properly discharge its obligations pursuant to article 64 of the Statute and adjudicate on any issues as to Mr Said's fitness to stand trial, the Chamber finds that a medical examination of the accused pursuant to rule 135 of the Rules is now required.

7. Accordingly, pursuant to rule 135 of the Rules, the Chamber orders the Registry to submit to the Chamber, for its consideration, a shortlist of experts who are qualified and in a position 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, no later than 23 June 2023.

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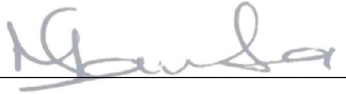
<sup>6</sup> Annex A to the Registry Transmission of the Medical Officer's Report, 12 June 2023, ICC-01/14-01/21-615-SECRET-Exp-Anx.

8. Thereafter, the parties and participants are invited to submit any observations on the shortlist of experts submitted by the Registry, as well as observations on any directions to be given to any prospective experts, no later than 30 June 2023.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**ORDERS** the Registry to submit a shortlist of experts in line with paragraph 7 above no later than 23 June 2023; and

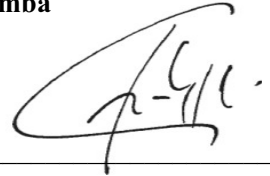
**INVITES** the parties and participants to submit observations in line with paragraph 8 above no later than 30 June 2023.



**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 13 June 2023

At The Hague, The Netherlands