

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: **6 February 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 *ex parte* Defence and Registry

Decision on the Defence Request to Postpone a Status Conference

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

The Office of the Prosecutor

Counsel for the Defence

Ms Jennifer Naouri

Mr Dov Jacobs

Legal Representatives of Victims

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 Peter Lewis

Mr Marc Dubuisson

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 63, 64 and 67 of the Rome Statute (the 'Statute'), and rule 132(2) of the Rules of Procedure and Evidence (the 'Rules'), issues this 'Decision on the Defence Request to Postpone a Status Conference'.

I. PROCEDURAL HISTORY

1. On 1 February 2023, the Chamber cancelled all further trial hearings and scheduled a status conference for 7 February 2023.¹
2. On 3 February 2023, the Defence filed a secret *ex parte* request to postpone the status conference (the 'Request').²

II. SUBMISSIONS

3. In the Request, the Defence asks the Chamber to postpone the status conference scheduled for 7 February 2023 until such time when there will be sufficient information to allow the making of an informed decision about: (i) the possibility of holding a hearing in Mr Said's presence or without his presence without his express consent; (ii) the appropriateness of revealing medical information about Mr Said; and (iii) the practical and procedural impact of Mr Said's state of health.³
4. In the meantime, the Defence seeks reassurances from the Chamber that the confidentiality of any medical information concerning Mr Said's state of health will be respected.⁴
5. In support of the Request, the Defence notes that to hold a status conference now is premature and would lead prematurely to the revealing of information covered by medical secrecy.⁵ The Defence argues that the accused has the right to participate in his

¹ Email from Chamber to parties and participants, 1 February 2023, at 08:59.

² Demande de report de la conférence de mis en état prévue le 7 février 2023, 3 February 2023 (filed on 2 February 2023), ICC-01/14-01/21-592-SECRET-Exp (the 'Request').

³ Request, p. 14.

⁴ Request, p. 14.

⁵ Request, para. 28.

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trial by being physically present,⁶ noting that Mr Said has not waived his right to be present.⁷

6. Furthermore, the Defence refers to the right of an individual in respect of their personal information, including medical information, and submits that disclosure of such information to third parties cannot take place without the consent of the person concerned.⁸ In this regard, the Defence notes that Mr Said has not consented to the disclosure of his medical information⁹ and there is no reason to disclose the particulars of Mr Said's health situation at present,¹⁰ and requests that the Chamber defer holding any status conference until more information regarding Mr Said's medical situation is obtained.¹¹

III. ANALYSIS

7. The Chamber is fully cognisant of the importance of the requirement that the accused be present during the trial under article 63(1) of the Statute and the right of the accused to be present at the trial under article 67(1)(d) of the Statute. Furthermore, the Chamber recalls the Appeals Chamber's jurisprudence regarding the accused's central role in the proceedings,¹² particularly regarding the hearing of witnesses,¹³ and Mr Said's wishes as expressed during the *ex parte* hearing of 15 November 2022.¹⁴

8. Nevertheless, for the reasons that follow, the Chamber is not persuaded that the status conference scheduled for Tuesday 7 February 2023 should be postponed.

9. First, the Chamber considers that the scheduled status conference does not represent a continuation of the trial in the absence of Mr Said and does not violate articles 63(1) and 67(1)(d) of the Statute. In this regard, the Chamber finds that the

⁶ Request, paras 19-22

⁷ Request, paras 25, 29.

⁸ Request, para. 26.

⁹ Request, paras 35-37.

¹⁰ Request, paras 41-44.

¹¹ Request, paras 50-52.

¹² Appeals Chamber, *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Judgment on the appeal of the Prosecutor against the decision of Trial Chamber V(a) of 18 June 2013 entitled 'Decision on Mr Ruto's Request for Excusal from Continuous Presence at Trial', 25 October 2013, [ICC-01/09-01/11-1066](#), (the '*Ruto & Sang* OA 5 Judgment'), para. 49.

¹³ [Ruto & Sang OA 5 Judgment](#), para. 49.

¹⁴ ICC-01/14-01/21-T-039-Conf-Exp-Eng, p. 3, lines 12-14.

authority relied upon by the Defence¹⁵ largely pertains to the continuation of *evidentiary* hearings.¹⁶ The Chamber notes that the status conference on 7 February 2023 will relate to the logistical organisation of the trial and is not an evidentiary hearing.¹⁷

10. Second, the Chamber finds that Mr Said's medical condition cannot constitute an absolute bar to the holding of any and all hearings. Indeed, the Chamber has the ongoing responsibility pursuant to article 64(2) of the Statute to ensure the fair and expeditious conduct of these proceedings and must be able to engage with the parties in person as it sees fit. The Chamber understands that Mr Said's recovery may take time and, in that regard, it must provide some limited information to all the parties and participants regarding the status of the proceedings and give them the opportunity to raise any issues. That notwithstanding, the Chamber is mindful of the need to exercise caution in this respect. Accordingly, the Chamber stresses that the status conference to be held on Tuesday 7 February 2023 will be strictly limited in terms of its scope and the information to be divulged.

11. Last, the Chamber notes that, although Mr Said is physically unable to attend the scheduled status conference due to his medical condition, he continues to be represented by counsel who will be able to make submissions on his behalf and ensure that his interests are protected during the status conference. The Chamber will ensure that the Defence is not placed in a position whereby it has to make submissions which would require further instructions from the accused.

12. Accordingly, the Chamber rejects the Defence's request to postpone the status conference scheduled for Tuesday 7 February 2023.

13. As regards the Defence's arguments concerning the need to respect the confidentiality of any medical information concerning Mr Said's state of health, the Chamber stresses the purpose and limited scope of the status conference. The Chamber

¹⁵ See Request, paras 20-22 and references therein.

¹⁶ Emphasis added.

¹⁷ See Trial Chamber V(B), *The Prosecutor v. Uhuru Muigai Kenyatta*, Partially Dissenting Opinion of Judge Kuniko Ozaki to the Decision on Defence Request from attendance at, or for adjournment of, the status conference scheduled for 8 October 2014, 30 September 2014, [ICC-01/09-02/11-960-Anx](#), para. 4.

will not reveal specific details concerning Mr Said's current state of health to the Office of the Prosecutor (the 'Prosecution') and the Common Legal Representative of Victims, but only basic information to allow them to understand: (i) the reason behind the adjournment of all trial hearings and; (ii) the uncertainty about when trial hearings could possibly resume. Indeed, the Prosecution and the Common Legal Representative of Victims are entitled to a minimum amount of explanation for why the trial is interrupted for a period of time. In this respect, the only information which the Prosecution and the Common Legal Representative of Victims need to have is: (i) that Mr Said is currently too ill to attend trial hearings; and (ii) the current best estimate of when trial hearings might resume in a best-case scenario.

14. In order to avoid the risk of unauthorised disclosure of the limited information to be provided, the Chamber has already ordered the following: (i) no real time transcript through Transcend to ensure that people outside the courtroom cannot follow the hearing; (ii) restricted distribution/access of the official transcript; (iii) blocking of the LiveCourt programme; and (iv) restriction of access to the courtroom to only persons that are strictly necessary. Furthermore, the Chamber intends to issue instructions to those present at the hearing that any information mentioned is strictly confidential and must be treated as such.

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FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the request to postpone the status conference.

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




Judge María del Socorro Flores Liera



Judge Miatta Maria Samba

Presiding Judge



Judge Sergio Gerardo Ugalde Godínez

Dated 6 February 2023

At The Hague, The Netherlands