

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: 16 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 Redacted**

**Decision on the Defence Request for Reconsideration of 'Order pursuant to rule  
135 of the Rules of Procedure and Evidence'**

**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**

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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 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, and regulation 156 of the Regulations of the Registry, issues this ‘Decision on the Defence Request for Reconsideration of “Order pursuant to rule 135 of the Rules of Procedure and Evidence”’.

## I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 12 June 2023, the Registry filed a report from the Medical Officer at the Detention Unit indicating that Mr Said had ceased to give his consent for his medical information to be disclosed to the Chamber (the ‘Registry Report’).<sup>1</sup>
2. On 13 June 2023, the Chamber issued an order pursuant to rule 135 of the Rules (the ‘Order’).<sup>2</sup> Therein the Chamber noted, *inter alia*, that the proceedings have been adjourned for a significant period of time due to the health of the accused and it was no longer receiving information from the Medical Officer regarding Mr Said’s health.<sup>3</sup> As a result, the Chamber found that a medical examination of the accused pursuant to rule 135 of the Rules was required, ordered the Registry to submit a shortlist of experts, and invited observations from the parties and participants.<sup>4</sup>
3. On 14 June 2023, the Defence filed a request providing further information on the Registry Report and requested reconsideration of the Order (the ‘Request’).<sup>5</sup>

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<sup>1</sup> Annex to the Registry Transmission of the Medical Officer’s Report, 12 June 2023, ICC-01/14-01/21-615-SECRET-Exp.

<sup>2</sup> Order pursuant to rule 135 of the Rules of Procedure and Evidence, 13 June 2023, ICC-01/14-01/21-616-SECRET.

<sup>3</sup> Order, para. 6.

<sup>4</sup> Order, paras 6-8.

<sup>5</sup> Éléments d’informations portant sur la teneur du « Medical Officer’s Report » du 12 juin 2023 (ICC-615-SECRET-Exp) et demande de reconsidération de la décision de la Chambre du 13 juin 2023 ordonnant une expertise conformément à la Règle 135 du Règlement de Procédure et de preuve., 14 June 2023, ICC-01/14-01/21-617-SECRET-Exp (with 4 SECRET *ex-parte* Annexes). A confidential redacted version was filed on 15 June 2023, which the Chamber subsequently ordered reclassification as SECRET redacted (ICC-01/14-01/21-617-SECRET-Red) (*See* Email from Chamber to the Registry and Defence dated 15 June 2023 at 18:02).

4. In the Request, the Defence submits that Mr Said did not refuse to disclose medical information but rather requested further time to consider the report, and take advice from counsel, before allowing it to be communicated.<sup>6</sup> In this regard, the Defence requests that the Chamber order the Registry to ensure that: (i) Mr Said receives medical reports to which he must consent in French; (ii) Mr Said has a reasonable period of time to reflect on whether to consent to disclose medical information; (iii) Mr Said is able to meet with his counsel and communicate to her any document he considers relevant in his interests; and (iv) [REDACTED].<sup>7</sup>

5. The Defence further requests that the Chamber reconsider the Order, noting, *inter alia*, that it is premature to conduct an expert assessment pursuant to rule 135 of the Rules given [REDACTED]<sup>8</sup> and any violation of medical secrecy is not justified at this stage.<sup>9</sup>

## II. APPLICABLE LAW

6. The Chamber recalls the standard applicable to requests for reconsideration and the jurisprudence of previous chambers in considering that:

[i]t has the power to reconsider its decision upon request of the parties or *proprio motu*, particularly in light of Articles 64(2) and 67 of the Statute. Nevertheless, reconsideration is exceptional and should only take place if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice. New facts and arguments arising since the decision was rendered may be relevant to this assessment.<sup>10</sup>

7. The Chamber recalls that it has followed this jurisprudence in previous decisions,<sup>11</sup> and sees no reason to depart from the above standard.

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<sup>6</sup> Request, paras 25, 32, 39, 45.

<sup>7</sup> Request, p. 14. *See also*, para. 42.

<sup>8</sup> Request, paras 46, 48, 51-53.

<sup>9</sup> Request, paras 58-59.

<sup>10</sup> Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision on Defence request for reconsideration, or leave to appeal the 'Fourth decision on matters related to the conduct of proceedings', 2 March 2021, [ICC-01/12-01/18-1330](#), para. 4; Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on Request for Reconsideration of the Order to Disclose Requests for Assistance, 15 June 2016, [ICC-02/04-01/15-468](#), para. 4; Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Decision on the Prosecution's request for reconsideration or, in the alternative, leave to appeal, 18 March 2015, [ICC-01/04-02/06-519](#), para. 12.

<sup>11</sup> *See*, Decision on Defence Request for Reconsideration or Leave to Appeal the 'Directions on the Conduct of Proceedings' (ICC-01/14-01/21-251), 8 April 2022, [ICC-01/14-01/21-275](#).

### III. ANALYSIS

8. At the outset, the Chamber strongly encourages and expects the Registry, the Medical Officer and the Defence to work collaboratively and in good faith, in furtherance of Mr Said's best interests.

9. For the reasons that follow, the Chamber is unpersuaded by the Defence's submissions that reconsideration of the Order is warranted.

10. First, the Chamber reiterates that it has an obligation pursuant to article 64 of the Statute to ensure that the proceedings are conducted fairly and expeditiously. As set out in the Order, in order to effectively discharge its obligations, and allow it to make an informed assessment as to whether the proceedings should continue to be adjourned, the Chamber must be in possession of the necessary information regarding Mr Said's medical condition and prognosis.<sup>12</sup> At present, irrespective of the Defence's submissions in the Request, the Chamber still does not have the necessary information to make a proper assessment regarding the adjournment of the proceedings. Accordingly, there are no new circumstances warranting reconsideration of the Order.

11. Second, the Chamber highlights that the Order made reference to the fact that the proceedings have been adjourned for a significant period of time due to the health of the accused.<sup>13</sup> The Chamber remains of the view, given the extensive passage of time, that an independent, objective medical assessment of Mr Said's health is needed in order for the Chamber to be properly informed.<sup>14</sup> The Chamber is of the view that it would facilitate the fairness and expeditiousness of the proceedings to have independent expert(s) who can objectively assess, *inter alia*, Mr Said's medical condition and his prognosis and report to the Chamber directly.

12. The Chamber takes note of the Defence's submissions regarding the timing of an expert assessment and disclosure of medical information to the Office of the Prosecutor and Common Legal Representative of Victims. At this stage, the Chamber has simply requested a shortlist of potential experts from the Registry and observations thereon

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<sup>12</sup> Order, para. 6.

<sup>13</sup> Order, para. 6.

<sup>14</sup> See Order, para. 6.

from the parties and participants.<sup>15</sup> In this regard, no decision as to the specific timing of such an assessment and any subsequent disclosure has been taken at present.

**FOR THESE REASONS, THE CHAMBER HEREBY**

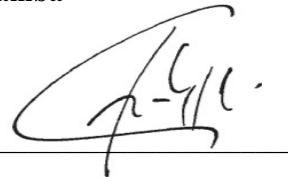
**REJECTS** the Request.



**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 16 June 2023

At The Hague, The Netherlands

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<sup>15</sup> See Order, paras 7-8.