

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No.: ICC-01/14-01/21
Date: 15 May 2024**

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***

Public

Second 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

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 63, 64(2), 64(6)(f), 67, 68(1) of the Rome Statute (the ‘Statute’), rule 135 of the Rules of Procedure and Evidence (the ‘Rules’), regulations 44, 92, 103 of the Regulations of the Court, and regulation 56, 155, 156 and 189 of the Regulations of the Registry, issues this ‘Second Order Pursuant to Rule 135 of the Rules of Procedure and Evidence’.

I. PROCEDURAL HISTORY

1. On 13 June 2023, the Chamber acting pursuant to rule 135 of the Rules, ordered the Registry to submit to the Chamber, for its consideration, a shortlist of medical experts for the purpose of conducting a medical examination of the accused (the ‘Order for a Shortlist of Potential Experts’).¹
2. On 14 August 2023, the Chamber appointed two experts (the ‘Panel’) to undertake a medical examination of Mr Said pursuant to rule 135 of the Rules (the ‘Decision Appointing Experts’).² Therein, the Chamber ordered, *inter alia*, the Panel 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.’³
3. On 15 December 2023, following a report from the Panel,⁴ and submissions from the parties and participants,⁵ the Chamber issued the ‘Decision on Mr Said’s Fitness to

¹ Order pursuant to rule 135 of the Rules of Procedure and Evidence, 15 December 2023, [ICC-01/14-01/21-616](#). A SECRET version was filed on 13 June 2023 (ICC-01/14-01/21-616-SECRET).

² Decision Appointing Experts for the Purpose of Medical Examination pursuant to Rule 135 of the Rules of Procedure and Evidence, 24 August 2023, ICC-01/14-01/21-630-Red. A SECRET *ex parte* version and SECRET Redacted version were filed on 14 August 2023 (ICC-01/14-01/21-630-SECRET-Exp; ICC-01/14-01/21-630-SECRET-Red).

³ Decision Appointing Experts, ICC-01/14-01/21-630-Red, para. 39.

⁴ Annex to the Registry’s Transmission of the Defence’s Redacted Panel of Experts’ Report, 4 December 2023, ICC-01/14-01/21-660-SECRET-Anx (the ‘Panel’s Report’).

⁵ Prosecution’s Submissions regarding the Panel of Experts’ Report concerning the Accused’s fitness to stand trial, 11 December 2023, ICC-01/14-01/21-664-SECRET; Observations de la Défense portant sur l’inaptitude actuelle de Monsieur Said à être jugé, le rapport des experts ICC-01/14-01/21-660-SECRET-Anx et demande de surseoir à statuer sur l’aptitude future de Monsieur Said en l’absence des éléments

Stand Trial’ (the ‘Decision on Fitness’).⁶ Therein, the Chamber, *inter alia*, found Mr Said fit to stand trial and ordered the trial to resume on 29 January 2024.⁷ In addition, the Chamber ordered the Medical Officer to report to the Chamber regarding any adjustments to the sitting schedule to facilitate Mr Said’s ongoing treatment.⁸

4. On 17 January 2024, following submissions from the Medical Officer,⁹ the Chamber issued the ‘Decision on the Defence’s Request for Leave to Appeal the “Decision on Mr Said’s Fitness to Stand Trial” and Further Directions on Sitting Schedule’.¹⁰ Therein the Chamber, *inter alia*, adjusted the sitting schedule, but noted that it expected the Defence, Mr Said and the Medical Officer to ‘work together in good faith, with a view to working towards resuming a regular sitting schedule.’¹¹

5. Following an incident where Mr Said declared that he felt unwell and was unable to continue with sessions as originally scheduled, on 10 May 2024, on instruction from the Chamber,¹² the Registry filed further recommendations from the Medical Officer regarding adaptations to the sitting schedule and Mr Said’s presence in court (the ‘Second Registry Report on the Adjustments to the Sitting Schedule’).¹³ Specifically, the Medical Officer recommends: (i) a maximum of five days a week in court; (ii) only two court sessions per day, both in the morning; and (iii) each court session be a maximum of 90 minutes each, with a 30 minute break between sessions where Mr Said is able to lie down.¹⁴ In respect of the reasons for such recommendations, the Registry

utiles pour se prononcer tant sur l’aptitude que sur le besoin d’aménagements., 11 December 2023, ICC-01/14-01/21-665-SECRET, with one SECRET annex; Victims’ Observations on the Panel of Experts’ Report (ICC-01/14-01/21-660-SECRET-Anx), 11 December 2023, ICC-01/14-01/21-666-SECRET.

⁶ Decision on Mr Said’s Fitness to Stand Trial, 15 December 2023, [ICC-01/14-021-667-Red](#). A confidential version was filed simultaneously (ICC-01/14-01/21-667-Conf).

⁷ Decision on Fitness, [ICC-01/14-021-667-Red](#), paras 44, 48.

⁸ Decision on Fitness, [ICC-01/14-021-667-Red](#), paras 45, 48.

⁹ Registry Report on the Adjustments to the Sitting Schedule, 12 January 2024, [ICC-01/14-01/21-669](#), para. 9.

¹⁰ Decision on the Defence’s Request for Leave to Appeal the ‘Decision on Mr Said’s Fitness to Stand Trial’ and Further Directions on Sitting Schedule, 17 January 2024, [ICC-01/14-01/21-672](#).

¹¹ Decision on the Defence’s Request for Leave to Appeal the ‘Decision on Mr Said’s Fitness to Stand Trial’ and Further Directions on Sitting Schedule, [ICC-01/14-01/21-672](#), paras 28-30.

¹² Email from the Chamber to the Detention Centre, dated 25 April 2024 at 11:18.

¹³ Second Registry Report on the Adjustments to the Sitting Schedule, 10 May 2024, ICC-01/14-01/21-759-Conf.

¹⁴ Second Registry Report on the Adjustments to the Sitting Schedule, ICC-01/14-01/21-759-Conf, para. 8.

notes that Mr Said has not consented to provide the medical report underlying the Medical Officer's recommendations to the Chamber.¹⁵

II. ANALYSIS

6. At the outset, the Chamber recalls that on account of Mr Said's medical condition the proceedings were adjourned for a period of a little over a year, resulting in a delay in completing the trial. Whilst evidentiary hearings have now resumed, the Chamber is concerned by the lack of progress towards resuming a regular sitting schedule and that sessions have had to be cancelled at short notice, disrupting the hearing of witness testimony. In this regard, the Chamber notes that it has an obligation to ensure that the proceedings are as expeditious as possible and it is in the interests of both the accused and the victims and witnesses that this trial concludes as soon as practicable.

7. The Chamber is cognisant that the Panel in its original assessment of Mr Said did not recommend any adaptations to the sitting schedule.¹⁶ However, when setting the sitting schedule, the Chamber took into consideration the fact that Mr Said's future treatment plan was still being finalised.¹⁷ The Chamber has taken note of the Medical Officer's recommendations regarding the adaptations to the sitting schedule and is concerned about the impact on the resumption of a normal schedule. The Chamber is also concerned that it has not been provided reasons for the most recent recommendations to reduce the sitting time. The Chamber notes the reasons of the Medical Officer not to provide the medical report as requested given the accused's lack of consent. However, the Medical Officer, as well as the accused, must understand that the Chamber cannot be expected to blindly accept the recommendations to reduce the hearing schedule on an ongoing basis. Moreover, in order for the Chamber to properly determine under which conditions Mr Said can participate in the proceedings without

¹⁵ Second Registry Report on the Adjustments to the Sitting Schedule, ICC-01/14-01/21-759-Conf, para. 10.

¹⁶ See Decision on Fitness, [ICC-01/14-01/21-667-Red](#), para. 45 referring to Panel's Report, ICC-01/14-01/21-660-SECRET-Anx, p. 20.

¹⁷ Decision on Fitness, [ICC-01/14-01/21-667-Red](#), paras 45, 48.

jeopardising his health, it must be in possession of information that will allow it to determine how hearings should be scheduled.

8. Accordingly, pursuant to rule 135 of the Rules, the Chamber finds that, in the circumstances, there is a need to order a new medical assessment of Mr Said. Specifically, the Chamber finds it necessary for an independent medical expert to examine Mr Said and report to the Chamber on his physical ability to participate in a regular sitting schedule (five days of three 90 minute sessions), and whether such participation would likely jeopardise his health, so it can make a decision on the scheduling of the proceedings.

9. In order for the expert to be able to articulate a fully informed opinion, the Registry is instructed to brief him or her on the ordinary course of proceedings in this case, including the transport arrangements and the facilities inside and outside the courtroom. The Registry should also explain to the expert the conditions that could be put in place in the Detention Centre to allow the accused to follow the proceedings remotely, which is a possible option that Mr Said can avail himself of.

10. The Chamber is of the view that this assessment should be carried out as soon as practicable, and, if possible, during the week of the 27 May 2024. In this regard, the Chamber finds that it is preferable for Mr Said to be examined during a week when evidentiary hearings are taking place so as to ascertain a more accurate picture of his capacities.

11. The Chamber is cognisant that Mr Said has previously been examined by two experts, one of whom practices in the Netherlands. To this end, the Chamber instructs the Registry to ascertain whether Dr Bevers is available to examine Mr Said during the week of the 27 May 2024 and can file a report to the Chamber by 7 June 2024.

12. Should Dr Bevers not be available, the Chamber instructs the Registry to identify a general medical practitioner on the List of Experts who can examine Mr Said during the week of the 27 May 2024. The name of the expert should be submitted to the Chamber for its consideration no later than 23 May 2024.

13. In the interim, the Defence should provisionally seek, pursuant to regulation 92 of the Regulations of the Court and regulation 156 of the Regulations of the Registry, Mr Said's consent for disclosure of his detention and medical records to Dr Bevers or the expert to be appointed, as applicable, with final written consent ready to be filed on the record as soon as the Chamber formally appoints the expert for the medical examination.

14. Last, the Chamber finds that the 'Second Registry Report on the Adjustments to the Sitting Schedule' does not warrant a confidential classification and can be reclassified as public. Accordingly, the Chamber orders the Registry to reclassify ICC-01/14-01/21-759-Conf as public.

FOR THESE REASONS, THE CHAMBER HEREBY

ORDERS a further medical examination of the accused pursuant to rule 135 of the Rules in line with paragraph 8 above;

ORDERS the Registry to proceed in accordance with paragraphs 9, 10, 11 and 12 above;

ORDERS the Defence to seek Mr Said's consent in accordance with paragraph 13 above; and

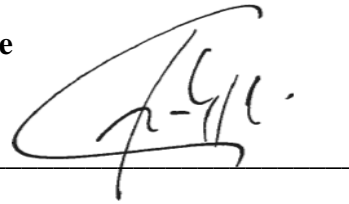
ORDERS the Registry to reclassify ICC-01/14-01/21-759-Conf as public.



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 15 May 2024

At The Hague, The Netherlands