

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/14-01/21

Date: 27 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**

CONFIDENTIAL

Confidential redacted version of "Registry's Submissions under Regulation 24bis of the Regulations of the Court in relation to the Defence's "Éléments d'informations cruciaux au soutien d'une demande de reconsidération de « Second Order Pursuant to Rule 135 of the Rules of Procedure and Evidence» (ICC-01/14-01/21-761) du 15 mai 2024.", 20 May 2024, ICC-01/14-01/21-763-Conf", 24 May 2024, ICC-01/14-01/21-769-SECRET-Exp

Source: Registry

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

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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of the Public Counsel for
Victims**

**The Office of the Public Counsel for the
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States' Representatives

Amicus Curiae

REGISTRY

Registrar

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Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

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**Victims Participation and Reparations
Section**

I. Introduction

1. Pursuant to Regulation 24bis of the Regulations of the Court, the Registry hereby presents its submissions in relation to the “Éléments d’informations cruciaux au soutien d’une demande de reconsidération de « Second Order Pursuant to Rule 135 of the Rules of Procedure and Evidence» (ICC-01/14-01/21-761) du 15 mai 2024.”, filed on 20 May 2024 (“Defence Submissions”).¹

II. Procedural history

2. On 15 December 2023, the Chamber found Mr Said fit to stand trial, gave notice that it intended to resume hearings on 29 January 2024, and ordered, *inter alia*, the Registry and the Medical Officer of the International Criminal Court’s Detention Centre (respectively “MO”, “ICC” and “DC”) to report to the Chamber by 12 January 2024, should adjustments to the sitting schedule be required.²
3. On 12 January 2024, the Registry reported the advice of the MO on the modalities regarding Mr Said’s presence in Court.³
4. On 25 April 2024, the Chamber instructed the MO “to prepare a fresh, objective, and fully motivated report on Mr Said’s ability to participate in the upcoming hearings as currently scheduled [...]. Specifically, the Chamber wishes to be advised as to whether sitting for a full week of hearings (5 days with three sessions) would pose serious medical issues for Mr Said”.⁴ The Chamber further instructed the MO to provide the report no later than 13 May 2024.⁵

¹ Defence, “Éléments d’informations cruciaux au soutien d’une demande de reconsidération de « Second Order Pursuant to Rule 135 of the Rules of Procedure and Evidence» (ICC-01/14-01/21-761) du 15 mai 2024.” (“Defence Submissions”), 20 May 2024, ICC-01/14-01/21-763-Conf.

² Trial Chamber VI, “Decision on Mr Said’s Fitness to Stand Trial”, ICC-01/14-01/21-667-Conf, paras. 44, 45 and 48.

³ Registry, “Registry Report on the Adjustments to the Sitting Schedule”, 12 January 2024, ICC-01/14-01/21-669, para.9.

⁴ Email from the Trial Chamber VI to the Registry on 25 April 2024 at 11:18.

⁵ Email from the Trial Chamber VI to the Registry on 25 April 2024 at 11:18.

5. On 10 May 2024, the Registry transmitted the medical advice of the MO on the modalities regarding Mr Said's presence in Court and reported that Mr Said had not consented to provide the medical report explaining the medical reasons underlying the aforementioned MO's advice to the Chamber.⁶

III. Classification

6. Pursuant to regulation 24*bis* of the Regulations of the Court ("RoC") and regulation 14(d) of the Regulations of the Registry ("RoR"), the present submission is classified as Secret *ex parte* only available to the Registry and the Defence for Mr Said since it refers to sensitive information related to the health condition of the detained person and detention matters. A confidential redacted version of this submission will be filed simultaneously.

IV. Applicable law

7. For the purpose of the present submission, the Registry has considered regulations 103 of the RoC and regulations 155 and 156 of the RoR.

V. Submissions

A) Standard consent procedure at the ICC DC:

8. The Defence's Submissions state that "*Monsieur Said et sa Défense ont été informés pour la première fois le 10 mai 2023 des recommandations formelles du médecin du quartier pénitentiaire (ci-après le médecin) concernant le calendrier des audiences. Cette écriture fait état d'informations concernant directement Monsieur Said indiquant ce qu'aurait été sa position formelle en affirmant, de manière erronée, que Monsieur Said n'avait pas consenti à la communication d'informations utiles à la Chambre*".⁷
9. As reported on 10 May 2024,⁸ the Registry confirms that the MO met with Mr Said to discuss the disclosure of the medical report to the Chamber, and which

⁶ Registry, "Second Registry Report on the Adjustments to the Sitting Schedule", 10 May 2024, ICC-01/14-01/21-759-Conf.

⁷ Defence Submissions, para. 20.

⁸ Registry, "Second Registry Report on the Adjustments to the Sitting Schedule", ICC-01/14-01/21-759-Conf, para. 10.

contained the medical reasons underlying the MO's advice on the sitting schedule. On 10 May 2024, the Registry also reported⁹ that Mr Said "has not consented for the purpose of regulation 156 of the RoR, to provide this medical report to the Chamber".

10. According to regulation 156 of the RoR the MO shall maintain a medical record of each detained person which shall be kept strictly confidential and which cannot be consulted by any persons other than the medical officer, his or her deputy, any medical staff directly involved in the detained person's treatment, or the medical personnel belonging to the independent inspecting authority, without the express written consent of the detained person. Therefore, in this case the MO is unable to disclose any reports including medical information without Mr Said's consent unless, in the opinion of the MO, there exists a danger to the health and safety of Mr Said, other detained persons or any person in the ICC DC (which at present is not the case).

11. In implementing regulation 156 of the RoR when a Chamber requests the MO to provide a medical report, the following consent procedure applies:

- a. The MO prepares a concept (draft) medical report intended for the Chamber;
- b. The MO discusses with the detained person the concept (draft) medical report, with the assistance of an interpreter when necessary, on the following points: 1) the medical information contained therein, 2) with whom it will be shared, 3) for which purpose(s), and 4) the general possible consequences (not of a judicial nature related to the alleged crimes for which the person has been accused) of sharing any personal medical information with parties outside the treating medical team;
- c. After the discussion, the MO asks the detained person whether he or she agrees to provide the medical report to the Chamber;

⁹ *Ibid.*, para. 10.

- d. If the detained person provides his or her signed and informed consent to the MO,¹⁰ the report can be transmitted to the Chamber. However, if the detained person does not provide his or her signed and informed consent to the MO, or if a pattern of refusal to consent to such reports develops, it would be more challenging for the MO to produce a signed medical report to transmit to the Chamber and to keep the Chamber correctly informed of the status of the detained person.

12. This is the standard consent procedure for all detained persons as implemented by the Medical Services at the ICC DC and at the International Detention Facilities housed in the Scheveningen Complex and the medical reports from the MO are based on the continued monitoring of the health of detained person concerned. The standard consent procedure carries at its core, the principle of patient's autonomy which requires the MO to respect a patient's (in this case the detained person's) opinions and choices, and which must be without undue influence from others. This standard procedure also protects the doctor-patient confidential relationship. Allowing anyone to influence a patient and/or a doctor, in this case a detained person and/or the MO, would be contrary to the doctor's ethical obligations.

B) Exceptional consent procedure at the ICC DC

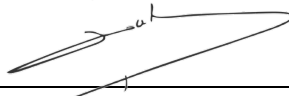
13. The Defence's Submissions state that "[...] *la Défense ne comprend pas bien la pression mise à Monsieur Said le 8 mai 2024, pour signer un « document », sans lui laisser l'opportunité de le lire et sans qu'il puisse parler à son Conseil, en violation de*

¹⁰ Before disclosing medical information to parties outside the treating medical team, the MO needs to ensure that the detained person expressly consents in writing or orally to such disclosure and that such consent is informed. This informed consent can only be obtained by way of a consultative process between the MO and the detained person. During this process, it is important that the detained person understands the purpose, content, and potential consequences of the intended disclosure. Throughout this process, the MO remains bound and informed by their ethical principles and professional standards.

la procédure pourtant décidée depuis presque un an pour obtenir le consentement éclairé de Monsieur Said".¹¹

14. The Registry informs the Chamber that when Mr Said was [REDACTED], the Medical Services implemented an exceptional consent procedure based on the exceptional circumstances related to Mr Said's medical condition at the time. On 21 November 2023, the medical team [REDACTED] determined that there was no longer a medical reason to [REDACTED] Mr Said [REDACTED] as a patient, and that he could therefore be transferred back to the wing at the ICC DC. Therefore, the Medical Services no longer implemented the exceptional consent procedure with Mr Said following his return to the ICC DC. The standard consent procedure was then re-implemented, and the Medical Services reported to the Registry that the regular consent procedure was explained to Mr Said.

15. In implementing the Chamber's "Second Order Pursuant to Rule 135 of the Rules of Procedure and Evidence"¹², the Registry informs that it is in the process of identifying "an independent medical expert to examine Mr Said".



Marc Dubuisson, Director Division of Judicial Services
on behalf of Mr Osvaldo Zavala Giler, Registrar

Dated this 27 May 2024

At The Hague, the Netherlands

¹¹ Defence Submissions, para. 51.

¹² Trial Chamber, "Second Order Pursuant to Rule 135 of the Rules of Procedure and Evidence", 15 May 2024, ICC-01/14-01/21-761, paras 8-12.