

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 4 June 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 Redacted

**Decision on the Defence's Request for Reconsideration of the 'Second Order
Pursuant to Rule 135 of the Rules of Procedure and Evidence' and Order
Appointing a Medical Expert**

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

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

Dr Frans Nollet

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 ‘Decision on the Defence’s Request for Reconsideration of the “Second Order Pursuant to Rule 135 of the Rules of Procedure and Evidence” and Order Appointing a Medical Expert’.

I. PROCEDURAL HISTORY

1. On 15 May 2024, the Chamber ordered, *inter alia*: (i) a further medical examination of the accused pursuant to rule 135 of the Rules; (ii) the Registry to, *inter alia*, ‘ascertain whether Dr Bevers is available to examine Mr Said’ or, should he be unavailable, ‘identify a general medical practitioner on the List of Experts who can examine Mr Said’; and (iii) the Defence to seek Mr Said’s consent for disclosure of his detention and medical records to Dr Bevers or the expert to be appointed (the ‘Second Rule 135 Order’).¹
2. On 20 May 2024, the Defence filed a request for reconsideration of the Second Rule 135 Order (the ‘Request’).²
3. On 21 May 2024, the Registry informed the Chamber, via email, that Dr Bevers was not available to examine Mr Said, and proposed Dr Haddad, who also previously examined Mr Said, as an alternative.³
4. On 24 May 2024, pursuant to regulation 24bis of the Regulations of the Court, the Registry filed submissions on, *inter alia*, ‘the [s]tandard consent procedure at the

¹ Second Order Pursuant to Rule 135 of the Rules of Procedure and Evidence, 15 May 2024, [ICC-01/14-01/21-761](#).

² Version publique expurgée des « 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. » (ICC-01/14-01/21-763-conf)., 20 May 2024, [ICC-01/14-01/21-763-Red](#). A confidential version was filed the same day (ICC-01/14-01/21-763-Conf).

³ Email from the Registry to the Chamber, dated 21 May 2024 at 20:21.

ICC [Detention Centre]’ and the ‘exceptional consent procedure’ that existed prior to [REDACTED] (the ‘Registry’s Regulation 24bis Submissions’).⁴

5. On 27 May 2024, the Defence filed a request for leave to reply to the Registry’s Regulation 24bis Submissions (the ‘Request for Leave to Reply’).⁵

6. On 28 May 2024, the Defence filed submissions regarding Mr Said’s access to his medical record (the ‘Defence Submissions on Access to the Medical Record’).⁶

7. On 28 May 2024, the Office of the Prosecutor (the ‘Prosecution’) responded to the Request, submitting that it should be rejected (the ‘Prosecution Response’).⁷

8. On 31 May 2024, the Registry informed the Chamber, via email, that it had identified Dr Frans Nollet, who is available to examine Mr Said during the week of 10 June 2024, attaching his curriculum vitae.⁸

9. The Common Legal Representative of Victims (the ‘CLRV’) did not file submissions in respect to any of the aforementioned filings.

II. SUBMISSIONS

A. Request

10. In the Request, the Defence submits that the Chamber should reconsider the Second Rule 135 Order, making reference to crucial information, in the Defence’s view,

⁴ 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» (ICC01/14-01/21-761) 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, 27 May 2024, ICC-01/14-01/21-769-Conf-Red. A SECRET *ex parte* version was filed on 24 May 2024 (ICC-01/14-01/21-769-SECRET-Exp).

⁵ Demande d’autorisation de répliquer à la « 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 (ICC-01/14-01/21-769-SECRET-Exp)., 27 May 2024, ICC-01/14-01/21-770-SECRET-Exp.

⁶ Éléments d’information concernant l’accès de Monsieur Said à son dossier médical., 28 May 2024, ICC-01/14-01/21-772-Conf-Exp, with one confidential *ex parte* annex (ICC-01/14-01/21-772-Conf-Exp-AnxA).

⁷ Prosecution’s Response to Defence Request for Reconsideration of “Second Order Pursuant to Rule 135 of the Rules of Procedure and Evidence, ICC-01/14-01/21-761”, 28 May 2024, ICC-01/14-01/21-774-Conf.

⁸ Email from the Registry to the Chamber, dated 31 May 2024, at 13:24.

which warrant reconsideration. First, the Defence submits that Mr Said continues to recover, and whilst he is doing everything he can, he has to deal with chronic ailments.⁹ In this regard, the Defence submits that medical information available to the Chamber paints a clear picture of Mr Said's physical condition and limitations, and that he can only participate in his trial under certain conditions.¹⁰

11. The Defence further notes that, instead of being able to focus solely on his rehabilitation, Mr Said is prioritising his participation in hearings and wishes to attend physically in person, making reference to previous submissions on participation via video link and noting that Mr Said's ailments will not be alleviated if he participates via video link.¹¹

12. The Defence avers that although the current rhythm of hearings is bearable for Mr Said, [REDACTED] and there is a need to exercise care in this regard.¹² The Defence submits that increasing the pace of the trial and focussing on full time participation will have negative effects and the Chamber should follow the recommendations of Mr Said's treating physicians who are familiar with the ICC system.¹³

13. On this point, the Defence avers that, since the resumption of the trial Mr Said has not received the medical recommendations communicated to the Chamber and only learned of their existence when informed by his counsel.¹⁴ The Defence notes that Mr Said has never objected to his medical information being communicated to the Chamber, but requests that he be given an opportunity to take cognisance of the information himself.¹⁵ On this point, the Defence objects to the pressure being put on Mr Said to consent to the disclosure of a document without giving him the opportunity to read it and speak to his counsel, and there is no justification for not following the regular procedure for obtaining Mr Said's informed consent.¹⁶ The Defence submits

⁹ Request, [ICC-01/14-01/21-763-Red](#), paras 25-29.

¹⁰ Request, [ICC-01/14-01/21-763-Red](#), paras 31-34.

¹¹ Request, [ICC-01/14-01/21-763-Red](#), paras 35-36.

¹² Request, [ICC-01/14-01/21-763-Red](#), paras 39-43.

¹³ Request, [ICC-01/14-01/21-763-Red](#), paras 45-47.

¹⁴ Request, [ICC-01/14-01/21-763-Red](#), para. 48.

¹⁵ Request, [ICC-01/14-01/21-763-Red](#), paras 49-50. *See also* para. 53.

¹⁶ Request, [ICC-01/14-01/21-763-Red](#), para. 51.

that there is a certain opacity to the procedure being followed which has led to a lack of understanding between the Medical Officer and Mr Said. In addition, the Defence notes there is no reason why the parties were not informed of the request made by the Chamber for a medical report.¹⁷

14. The Defence requests that Mr Said be given the report detailing the medical reasons justifying the accommodations so that he can consent to its disclosure, reiterating that the Medical Officer is in the best position to assess Mr Said.¹⁸ In this regard, the Defence submits that the Chamber does not explain why a new practitioner who does not know Mr Said and knows nothing about the ICC is in a better position to assess him.¹⁹ The Defence further avers that, following the last expert examination, [REDACTED].²⁰ The Defence submits that the moment the Chamber receives the report from the Medical Officer then it will be sufficiently informed and therefore there will be no reason to have recourse to an external medical practitioner.²¹

15. In the alternative, the Defence submits that if the Chamber does wish to appoint an expert it cannot be [REDACTED].²² In addition, the Defence requests that it be allowed an opportunity to make submissions on any expert proposed by the Registry before the Chamber appoints an expert.²³

B. Registry's Regulation 24bis Submissions

16. In the Registry's Regulation 24bis Submissions, the Registry avers that the Medical Officer met with Mr Said on 10 May 2024 to discuss disclosure of the medical report to the Chamber and that Mr Said did not consent to its disclosure for the purpose of regulation 156 of the Regulations of the Registry.²⁴ The Registry explains that pursuant to regulation 156 of the Regulations of the Registry the Medical Officer 'is unable to disclose any reports including medical information without Mr Said's consent unless, in the opinion of the [Medical Officer], there exists a danger to the health and

¹⁷ Request, [ICC-01/14-01/21-763-Red](#), para. 52.

¹⁸ Request, [ICC-01/14-01/21-763-Red](#), paras 55-56.

¹⁹ Request, [ICC-01/14-01/21-763-Red](#), para. 56.

²⁰ Request, [ICC-01/14-01/21-763-Red](#), para. 57.

²¹ Request, [ICC-01/14-01/21-763-Red](#), paras 59, 61.

²² Request, [ICC-01/14-01/21-763-Red](#), para. 62.

²³ Request, [ICC-01/14-01/21-763-Red](#), para. 62.

²⁴ Registry's Regulation 24bis Submissions, ICC-01/14-01/21-769-Conf-Red, para. 9.

safety of Mr Said, other detained persons or any person in the [Detention Centre] (which at present is not the case).'²⁵ The Registry then proceeds to explain the standard consent procedure in place when the Chamber requests a medical report from the Medical Officer.²⁶

17. Furthermore, the Registry submits that [REDACTED], 'the Medical Services implemented an exceptional consent procedure based on the exceptional circumstances related to Mr Said's medical condition at the time.'²⁷ However, when [REDACTED] 'the Medical Services no longer implemented the exceptional consent procedure' and the standard consent procedure was re-implemented, which was explained to Mr Said.²⁸

C. Request for Leave to Reply

18. In the Request for Leave to Reply, the Defence seeks leave to reply to the Registry's Regulation 24*bis* Submissions on the following points which, in its view, could not have been anticipated: (i) the Registry's new interpretation concerning the implementation of the procedure for obtaining informed consent from Mr Said;²⁹ and (ii) the Registry's new position in respect of Mr Said's right to consult counsel, which in the Defence's view, violates Mr Said's fundamental rights.³⁰

D. Defence Submissions on Access to the Medical Record

19. In the Defence Submissions on Access to the Medical Record, the Defence submits that Mr Said has requested, on multiple occasions, access to his complete medical file but, to date, Mr Said has not received his complete medical file.³¹

20. The Defence notes that, in the Second Rule 135 Order, the Chamber instructed the Defence to obtain Mr Said's consent for transmission of his medical file to the expert to be appointed, and as part of the implementation of this instruction, Mr Said has requested access to his entire medical file.³² The Defence reiterates that Mr Said cannot consent to disclosure of documents which he has not been able to see and

²⁵ Registry's Regulation 24*bis* Submissions, ICC-01/14-01/21-769-Conf-Red, para. 10.

²⁶ Registry's Regulation 24*bis* Submissions, ICC-01/14-01/21-769-Conf-Red, para. 11.

²⁷ Registry's Regulation 24*bis* Submissions, ICC-01/14-01/21-769-Conf-Red, para. 14.

²⁸ Registry's Regulation 24*bis* Submissions, ICC-01/14-01/21-769-Conf-Red, para. 14.

²⁹ Request for Leave to Reply, ICC-01/14-01/21-770-SECRET-Exp, paras 22-46.

³⁰ Request for Leave to Reply, ICC-01/14-01/21-770-SECRET-Exp, paras 47-62.

³¹ Defence Submissions on Access to the Medical Record, ICC-01/14-01/21-772-Conf-Exp, paras 2, 5.

³² Defence Submissions on Access to the Medical Record, ICC-01/14-01/21-772-Conf-Exp, paras 8-9

therefore is waiting to receive his complete medical file in order to be in a position to make an informed decision to consent to its disclosure to the expert to be appointed.³³

E. Prosecution Response

21. In the Prosecution Response, the Prosecution submits that the Request should be denied. In support of this submission, the Prosecution notes that the Request is premised on ‘an unfounded apprehension’ that ‘an independent medical expert may conflict with recommendations from the Medical Officer’.³⁴ In this regard, the Prosecution notes that the Second Rule 135 Order ‘does no more than delineate steps that will allow the Chamber to obtain relevant information before making decisions’.³⁵

22. The Prosecution submits that the Chamber has discretion to order an updated medical examination of Mr Said, noting that the Chamber can conduct further enquiries if it deems that medical evidence before it is insufficient to allow it to discharge its obligations pursuant to articles 64(2) and 68 of the Statute.³⁶ In this regard, the Prosecution points to the fact that rule 135 of the Rules allows the Chamber to order a medical examination for any reason.³⁷

23. The Prosecution further avers that the Request does not dispute the fact that the Chamber was not in possession of the relevant medical information and the Defence does not explain why the Chamber still has not been provided with the relevant medical information.³⁸ In connection with this, the Prosecution submits that the Defence cannot reasonably contend that the Chamber must take the Medical Officer’s recommendations, which affect both Mr Said’s fair trial rights and the victims and witnesses, at face value,³⁹ and that an updated medical examination of Mr Said will assist the Chamber ‘in the conduct and control of the proceedings’.⁴⁰

³³ Defence Submissions on Access to the Medical Record, ICC-01/14-01/21-772-Conf-Exp, paras 13-14.

³⁴ Prosecution Response, ICC-01/14-01/21-774-Conf, para. 3. *See also* paras 14-16.

³⁵ Prosecution Response, ICC-01/14-01/21-774-Conf, para. 4.

³⁶ Prosecution Response, ICC-01/14-01/21-774-Conf, para. 8.

³⁷ Prosecution Response, ICC-01/14-01/21-774-Conf, para. 9.

³⁸ Prosecution Response, ICC-01/14-01/21-774-Conf, para. 11.

³⁹ Prosecution Response, ICC-01/14-01/21-774-Conf, para. 12.

⁴⁰ Prosecution Response, ICC-01/14-01/21-774-Conf, para. 13.

24. The Prosecution notes that the request does not contest that it is an appropriate time for the Chamber to update itself on Mr Said's current state of health, and therefore the actions taken by the Chamber 'promotes, rather than undermines, the interests of justice and aligns the [Request].'⁴¹ In connection with this, the Prosecution notes that the 'real complaint underpinning the [Request] is the intent to restrict the scope of medical information available to the Chamber to that provided by the [Medical Officer] and/or his treating physicians along with representations from Mr Said's counsel.'⁴² The Prosecution avers that this is 'untenable' because the substance of the medical evidence relied upon by the Medical Officer is unknown, and even if the report is now provided, the Chamber is 'entitled to seek a second opinion and/or request further information.'⁴³

25. In addition, the Prosecution notes that the Request does not explain why a fully informed independent medical expert is unable to evaluate and report on Mr Said's current state of health.⁴⁴ In these circumstances, the Prosecution submits that 'there can be no suggestion that reconsideration as an exceptional measure, is needed to prevent an injustice.'⁴⁵

III. APPLICABLE LAW

26. 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 maybe relevant to this assessment.⁴⁶

⁴¹ Prosecution Response, ICC-01/14-01/21-774-Conf, para. 17.

⁴² Prosecution Response, ICC-01/14-01/21-774-Conf, para. 18.

⁴³ Prosecution Response, ICC-01/14-01/21-774-Conf, para. 19.

⁴⁴ Prosecution Response, ICC-01/14-01/21-774-Conf, para. 19.

⁴⁵ Prosecution Response, ICC-01/14-01/21-774-Conf, para. 21.

⁴⁶ 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

27. The Chamber recalls that it has followed this jurisprudence in previous decisions,⁴⁷ and sees no reason to depart from the above standard.

IV. ANALYSIS

A. Classification of the Registry's Regulation 24bis Submissions and Request for Leave to Reply

28. At the outset, the Chamber notes that the Registry's Regulation 24bis Submissions was filed as 'urgent' and SECRET. The Chamber finds that both the 'urgent' and SECRET classification were unnecessary and orders ICC-01/14-01/21-769-SECRET-Exp to be reclassified as 'confidential'. Connected with the foregoing, the Chamber notes that the Defence has sought reclassification of the Request for Leave to Reply as 'confidential'.⁴⁸ The Chamber has considered the Defence's request and accordingly orders the Registry to reclassify ICC-01/14-01/21-770-SECRET-Exp as 'confidential'.

29. The Registry, as well as the parties and participants, are reminded that the SECRET classification should only be used when absolutely necessary. Similarly, a document should only be filed as 'urgent' when immediate notification is required. In this instance there was no reason why the Registry's Regulation 24bis Submissions could not have been filed on the next working day.

30. Last, to the extent that the parties and the Registry have not filed public redacted versions of their filings, they are ordered to do so as soon as practicable.

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.

⁴⁷ See Decision on the Defence Request for Reconsideration of 'Order pursuant to rule 135 of the Rules of Procedure and Evidence', 15 December 2023, [ICC-01/14-01/21-618-Red](#), (the 'Decision on Request for Reconsideration of the First Rule 135 Order'). A SECRET *ex parte* and SECRET Redacted version were filed on 16 June 2023 respectively (ICC-01/14-01/21-618-SECRET-Exp; ICC-01/14-01/21-618-SECRET-Red); 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](#).

⁴⁸ Email from the Defence to the Chamber, dated 3 June 2024, at 15:29.

B. Analysis of the Request for Reconsideration

31. At the outset, the Chamber finds that it has sufficient submissions before it to rule on the Request and does not require further submissions from the Defence. Accordingly, the Defence's Request for Leave to Reply is rejected.

32. Before turning to the Defence's request for reconsideration, the Chamber reiterates its earlier direction that it expects the Registry, the Medical Officer and the Defence to work collaboratively, in good faith, and in furtherance of Mr Said's best interests.⁴⁹ Furthermore, the Chamber has taken note of the Registry's explanation of the consent procedure and its implementation pursuant to regulation 156 of the Regulations of the Registry. Whilst the Chamber takes no position in respect of the Medical Officer's ethical obligations, it notes that in the present proceedings Mr Said has been assigned counsel and has a right to consult his counsel on any matter related to these proceedings.⁵⁰

33. The above notwithstanding, the Chamber is not persuaded that reconsideration of the Second Rule 135 Order is warranted.

34. 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 Second Rule 135 Order, in order for the Chamber 'to properly determine under which conditions Mr Said can participate in the proceedings without jeopardising his health, it must be in possession of information that will allow it to determine how hearings should be scheduled.'⁵¹ In this regard, the Chamber notes that it has still not been provided with the relevant information it requires in order to make a proper assessment on how hearings should be scheduled.

35. Second, the Chamber recalls that hearings have had to be cancelled at short notice on account of Mr Said's health⁵² and observes that the Defence makes reference in the Request to [REDACTED].⁵³ In this regard, the Chamber has not been provided with

⁴⁹ See Decision on Request for Reconsideration of the First Rule 135 Order, [ICC-01/14-01/21-618-Red](#), para. 8.

⁵⁰ See articles 67(1)(b) and 67(1)(d) of the Statute.

⁵¹ Second Rule 135 Order, [ICC-01/14-01/21-761](#), para. 7.

⁵² See Second Rule 135 Order, [ICC-01/14-01/21-761](#), para. 6.

⁵³ See Request, [ICC-01/14-01/21-763-Red](#), paras 41-45.

any information as to what the current state of Mr Said's health is, [REDACTED], and what impact they may have on the scheduling of the proceedings. The Chamber therefore finds that a new medical examination is all the more necessary in the present circumstances. The Chamber stresses that it is in Mr Said's best interests that it is fully informed of his medical situation.

36. Last, as noted in the Second Rule 135 Order, the Chamber is of the view that an *independent* medical expert is required to conduct an objective assessment of Mr Said at this stage of the proceedings.⁵⁴ Whilst the Chamber has confidence in the Medical Officer, the Chamber notes that he is Mr Said's treating physician and, as envisaged by rule 135 of the Rules, there can be a need, at times, for an independent assessment of an accused person so as to ensure that the Chamber is able to properly discharge its obligation to ensure that the trial is fair and expeditious.

37. Accordingly, taking the above into consideration, the Chamber finds that reconsideration of the Second Rule 135 Order is unwarranted and the Request must be rejected.

C. Appointment of a Medical Expert

38. At the outset, the Chamber finds that submissions from the parties regarding the qualification of the expert to be appointed are not required. In this regard, the Chamber notes that the Defence did not contest the scope of the expert's brief as outlined in the Second Rule 135 Order. As stated in that Order, there is a need for Mr Said to be examined as soon as possible and the type of examination to be carried out is limited to assessing Mr Said's physical capacities to participate in a regular sitting schedule. In any event, the Chamber notes that the Defence has already made submissions in the Request, indicating that the Defence is of the view that the experts who previously examined Mr Said are unsuitable and that the Medical Officer is in the best position to evaluate Mr Said.⁵⁵ In the circumstances, the Defence's request to make further submissions regarding the expert to be appointed is rejected.

⁵⁴ See Second Rule 135 Order, [ICC-01/14-01/21-761](#), para. 8.

⁵⁵ See Request, [ICC-01/14-01/21-763-Red](#), paras 46-47, 56-57, 62.

39. The Chamber will now turn to the appointment of the medical expert who can examine Mr Said pursuant to rule 135 of the Rules. First, the Chamber notes that Dr Bevers is not available to examine Mr Said, but Dr Haddad is available.⁵⁶ The Chamber takes note of the Defence's submissions that [REDACTED] between Mr Said and the experts who previously examined him. Whilst this is by no means determinative, for the sake of progressing matters, the Chamber finds that it would not facilitate the expeditiousness of the proceedings for Dr Haddad to be reappointed at this stage.

40. Turning to the alternative expert proposed by the Registry, the Chamber notes from Dr Nollet's curriculum vitae that he is a professor of rehabilitative medicine. In this regard, the Chamber notes that the Defence has made reference to Mr Said's rehabilitation in the Request and the Chamber finds that having an expert specialised in rehabilitative medicine would be suitable for the present purposes. The Chamber further observes that Dr Nollet is the 'principal investigator at the Amsterdam Universities Medical Center' and has conducted research on 'preserving and improving daily life performance of patients with chronic disabling conditions'. Last, the Chamber notes that Dr Nollet practises in the Netherlands and is available to examine Mr Said during the week of 10 June, when evidentiary hearings are due to take place.

41. Accordingly, based on the foregoing, having due regard to the qualifications of Dr Nollet, the Chamber finds him suitable to conduct the medical examination and decides to appoint him to examine Mr Said.

42. Last, the Chamber notes that Dr Nollet is not currently admitted to the Court's List of Experts. As per rule 135(3) of the Rules and regulation 44 of the Regulations of the Court, the Chamber finds that this does not preclude his appointment, nor his ability to take up his appointment and conduct the medical examination.⁵⁷ This

⁵⁶ Email from the Registry to the Chamber, dated 21 May 2024 at 20:21.

⁵⁷ See 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, para. 33. 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).

notwithstanding, the Chamber instructs the Registry to add him to the Court's List of Experts as soon as possible.

D. Directions on the medical examination

1. General Directions

43. In line with the directions given in the Second Rule 135 Order, the Chamber instructs Dr Nollet 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.

2. Contact with the Expert

44. In order to maintain the impartiality of Dr Nollet, the parties and participants shall refrain from any contact with him, unless approved by the Chamber.

3. Access to material and assistance by the Registry

45. The Registry is directed to provide all necessary assistance to Dr Nollet in order for him to undertake the medical examination of Mr Said. Furthermore, as set out in the Second Rule 135 Order, the Registry is instructed to brief Dr Nollet 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 Dr Nollet 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.⁵⁸

46. As noted in the Second Rule 135 Order, the Chamber is of the view that Dr Nollet should be provided with Mr Said's detention and medical records.⁵⁹ At the outset, the Chamber takes note of the Defence's submissions in the Defence Submissions on Access to the Medical Record and Mr Said's position that he cannot consent to the disclosure of documents which he does not have access to.⁶⁰ Furthermore, the Chamber also takes note of Mr Said's maintained requests to have access to his entire medical

⁵⁸ Second Rule 135 Order, [ICC-01/14-01/21-761](#), para. 9.

⁵⁹ See Second Rule 135 Order, [ICC-01/14-01/21-761](#), para. 13.

⁶⁰ Defence Submissions on Access to the Medical Record, ICC-01/14-01/21-772-Conf-Exp, para. 13.

file,⁶¹ and that he has never objected, in principle, to the communication of available medical information to the Chamber.⁶²

47. In line with its previous decisions in respect of similar requests by Mr Said to the Registry for additional information,⁶³ the Chamber encourages the Registry to continue to engage cooperatively with Mr Said. That notwithstanding, the Chamber notes that Mr Said has been provided with medical records, which he has consented to being disclosed to medical experts previously appointed by the Chamber.⁶⁴ Accordingly, the Chamber orders the Defence to seek Mr Said's consent for disclosure of all medical information currently available to him to Dr Nollet as soon as possible, and no later than 6 June 2024.

48. In the absence of written consent by the time-limit indicated above, the Chamber will conclude that Mr Said has refused consent, and take this into consideration in deciding whether to nevertheless order the transmission of the aforementioned documents for the purposes of the Dr Nollet's examination.

4. *Timing of physical examination*

49. As noted in the Second Rule 135 Order, the Chamber is of the view that the assessment should be carried out as soon as practicable and 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.⁶⁵

50. The Chamber notes that Dr Nollet is available to examine Mr Said during the week of 10 June 2024 and accordingly instructs the Registry to make the necessary arrangements to ensure that the medical examination takes place that week.

⁶¹ Defence Submissions on Access to the Medical Record, ICC-01/14-01/21-772-Conf-Exp, paras 5-12.

⁶² See Request, [ICC-01/14-01/21-763-Red](#), para. 50.

⁶³ See Decision Concerning Access of Experts to Mr Said's Medical Record, 15 December 2023, [ICC-01/14-01/21-634-Red-Corr](#), para. 5 (the 'Decision on Access to the Medical Record'). A SECRET *ex parte* version was filed on 24 August 2023 (ICC-01/14-01/21-667-SECRET-Exp). A SECRET redacted version was filed on 29 August 2023, with a corrigendum filed on 5 September 2023 (ICC-01/14-01/21-634-SECRET-Red-Corr).

⁶⁴ Decision on Access to the Medical Record, [ICC-01/14-01/21-634-Red-Corr](#), paras 2-3 *referring to* Consentement écrit de Monsieur Said en date du 17 août 2023 en application de la décision de la Chambre du 14 août 2023 (ICC-01/14-01/21-630-SECRET-Exp), 21 August 2023, ICC-01/14-01/21-632-SECRET-Exp-AnxA.

⁶⁵ Second Rule 135 Order, [ICC-01/14-01/21-761](#), para. 10.

5. *Submission of report and subsequent procedure*

51. The Chamber instructs Dr Nollet to submit his report following his examination of Mr Said on 21 June 2024.

52. The report should be submitted to the Registry, which shall then immediately file it on the record as SECRET *ex parte*, Defence and Registry only. Thereafter, the Defence may propose any redactions to the Registry no later than 16:00 on 24 June 2024. The Registry shall then file a SECRET redacted version of the report on the record as soon as possible thereafter. In addition, the Registry shall file, as an additional SECRET *ex parte* Defence and Registry only annex, the Defence's justifications for any redactions. As set out previously, while the Chamber is mindful of Mr Said's right to medical privacy, redactions may not be applied to facts, conclusions or recommendations which relate to Mr Said's physical ability to participate in a regular sitting schedule. Furthermore, in light of the fact that the Prosecution and CLRV have already been provided information regarding Mr Said's medical condition,⁶⁶ the Chamber expects redactions to be limited.

53. The Prosecution and CLRV may submit requests to the Chamber to review the redactions applied by the Defence by 16:00 on the next working day after receiving the redacted version of the report if they are of the view that they make it impossible for them to make meaningful submissions. If such request(s) are made, the Chamber will then rule on the redactions to be applied to the report.

54. Last, given the type of report requested, the Chamber currently sees no need for the parties and participants to make submissions. However, should the parties and participants wish to make submissions, they should do so within two days after receiving the redacted version of the report, either as filed by the Registry or as decided by the Chamber, as applicable.

⁶⁶ See ICC-01/14-01/21-660-SECRET-Anx.

FOR THESE REASONS, THE CHAMBER HEREBY

ORDERS the Registry to reclassify ICC-01/14-01/21-769-SECRET-Exp and ICC-01/14-01/21-770-SECRET-Exp in accordance with paragraph 28 above;

REJECTS the Defence Request for Leave to Reply;

REJECTS the Request;

APPOINTS Dr Nollet to undertake a medical examination of the accused pursuant to rule 135 of the Rules;

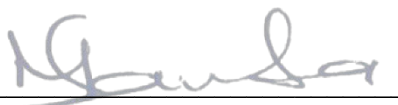
INSTRUCTS the Registry to make the necessary arrangements and provide all necessary assistance to facilitate the conduct of the examination in accordance with paragraphs 45 and 50 above;

ORDERS the Defence to seek Mr Said's consent in accordance with paragraph 47 above;

INSTRUCTS Dr Nollet to submit a report to the Registry no later than 21 June 2024;

ORDERS the Registry to file Dr Nollet's report on the record in accordance with paragraph 52 above; and

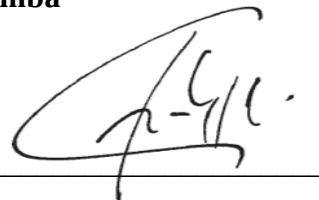
ORDERS the parties and participants to refrain from contact with Dr Nollet, and proceed in accordance with paragraphs 52 to 54 above.



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 4 June 2024

At The Hague, The Netherlands