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PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Single Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF

THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI

Public

Public Redacted Version of ‘Decision on the “Prosecution’s Request for Extension of Contact Restrictions”’, 5 March 2021, ICC-01/14-01/21-31-Conf

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
Mr Mame Mandiaye Niang
Mr Eric MacDonald

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

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

Mr Harry Tjonk

**Victims Participation and
Reparations Section**

Other

JUDGE ROSARIO SALVATORE AITALA, acting as Single Judge on behalf of Pre-Trial Chamber II of the International Criminal Court (the ‘Chamber’ and the ‘Court’), issues this Decision on the ‘Prosecution’s Request for Extension of Contact Restrictions’.

I. PROCEDURAL HISTORY

1. On 7 January 2019, Judge Rosario Salvatore Aitala, acting as Single Judge on behalf of the Chamber, issued the ‘Warrant of arrest for Mahamat Said Abdel Kani’ (the ‘Warrant of Arrest’ and ‘Mr Said’).¹
2. On 22 January 2021, the Chamber, by way of email, ordered the Registry to provisionally apply a number of restrictions in relation to Mr Said’s contacts and to provisionally separate Mr Said from Messrs Yekatom and Ngaïssona upon Mr Said’s arrival to the Court’s Detention Centre.²
3. On 24 January 2021, Mr Said was surrendered to the Court and arrived at the Court’s Detention Centre on 25 January 2021.³
4. On 25 January 2021, Judge Rosario Salvatore Aitala was designated by the Chamber as Single Judge responsible for carrying out the functions of the Chamber in the present case until otherwise decided.⁴
5. On 29 January 2021, in accordance with the Single Judge’s decision dated 26 January 2021⁵ and his further instructions dated 28 January 2021⁶, Mr Said appeared before the Single Judge pursuant to article 60(1) of the Rome Statute (the ‘Statute’) and rule 121(1) of the Rules of Procedure and Evidence.
6. On 3 February 2021, the Single Judge issued the ‘Decision on the “Prosecution’s Request for Contact Restrictions concerning Mahamat Said Abdel

¹ ICC-01/14-01/21-2-US-Exp; a public redacted version is also available, see ICC-01/14-01/21-2-Red2.

² Email from the Chamber to the Registry, at 18:42 hours; see ICC-01/14-01/21-28-Conf-AnxA.

³ Registry, Report of the Registry on the Arrest and Surrender of Mr Mahamat Said Abdel Kani and Request for Guidance, 27 January 2021, ICC-01/14-01/21-6-US-Exp, paras 13-27; a confidential redacted, *ex parte* (only available to the Registry, the Prosecutor and the Defence) version is also available, see ICC-01/14-01/21-6-Conf-Exp-Red.

⁴ Decision on the designation of a Single Judge, ICC-01/14-01/21-3.

⁵ Decision on the convening of a hearing for the initial appearance of Mr Mahamat Said Abdel Kani, ICC-01/14-01/21-4.

⁶ ICC-01/14-01/21-T-001-ENG, pp 4-5.

Kani in Pre-trial Detention” (the ‘First Restrictions Decision’).⁷ For a period of one month as of the date of that decision, the Single Judge imposed a number of contact restrictions in relation to Mr Said.⁸ However, the Single Judge rescinded the separation of Mr Said from Messrs Yekatom and Ngaïssona.⁹

7. On 22 February 2021, the Single Judge received the ‘Prosecution’s Request for Extension of Contact Restrictions’ (the ‘Prosecutor’s Request’).¹⁰

8. On 24 February 2021, the Single Judge received the ‘Registry Report on the Implementation of the Restrictions on Contact Ordered by the Single Judge’ (the ‘Registry Report’).¹¹

9. On 26 February 2021, following the appointment of Ms Naouri as counsel for Mr Said,¹² the Single Judge, by way of email, extended the time limit for the Defence to submit its observations on the contact restrictions in relation to Mr Said within the meaning of regulation 101(3) of the Regulations of the Court (the ‘Regulations’) and its response to the Prosecutor’s Request, also in light of the Registry Report, by no later than 16:00 hours on 3 March 2021.¹³

10. On 2 March 2021, the Single Judge issued the ‘Decision on the ‘Requête urgente de la Défense’ (ICC-01/14-01/21-26-Conf)’.¹⁴ The Single Judge partially granted the Defence request to be granted access to certain documents for the purpose of submitting its observations within the meaning of regulation 101(3) of the Regulations and its response to the Prosecutor’s Request.¹⁵

11. On 3 March 2021, the Single Judge, by way of email, *proprio motu* extended the contact restrictions in relation to Mr Said, as set forth in the First Restrictions Decision, until 5 March 2021 (inclusive) so as to adopt a decision on the Prosecutor’s

⁷ ICC-01/14-01/21-9-US-Exp; a confidential redacted version is also available, see ICC-01/14-01/21-9-Conf-Red.

⁸ ICC-01/14-01/21-9-US-Exp, paras 20-26.

⁹ ICC-01/14-01/21-9-US-Exp, para. 29.

¹⁰ ICC-01/14-01/21-22-Conf.

¹¹ ICC-01/14-01/21-23-Conf-Exp; a confidential redacted version is also available, see ICC-01/14-01/21-23-Conf-Red.

¹² Registry, Notification of the Appointment of Ms Jennifer Naouri as Counsel for Mr Mahamat Said Abdel Kani, ICC-01/14-01/21-24, together with confidential annex III and public annexes I and II.

¹³ Email from the Single Judge to Counsel for Mr Said, at 15:20 hours.

¹⁴ ICC-01/14-01/21-28-Conf, together with confidential annex A.

¹⁵ ICC-01/14-01/21-28-Conf, paras 19-25.

Request following the appointment of counsel for Mr Said and the resulting extension of the time limit for the Defence to respond to the Prosecutor's Request.¹⁶

12. On 3 March 2021, the Single Judge received the 'Réponse de la Défense à la « Prosecution's Request for Extension of Contact Restrictions » (ICC-01/14-01/21-22-conf), déposée le 22 février 2021' (the 'Defence Response').¹⁷

II. SUBMISSIONS RECEIVED BY THE SINGLE JUDGE

A. The Prosecutor's Request

13. According to the Prosecutor, '[t]he circumstances justifying the imposition of contact restrictions as identified in the Prosecution's First Request [for contact restrictions] and the [First Restrictions Decision] have not changed'.¹⁸ The Prosecutor also contends that, even if it is assumed that Mr Said has complied with the contact restrictions set forth in the First Restrictions Decision, 'compliance does not mitigate the [...] risks' and 'does [not] require terminating the restrictions'.¹⁹ The Prosecutor 'seeks an extension of the current restrictions for a period of three months' as '[t]his period is considered necessary and proportionate and finds precedent in the case *The Prosecutor v. Alfred Yekatom & Patrice Eduard Ngaissona*'.²⁰

14. As to the Single Judge's instruction in the First Restrictions Decision to specify which family members would qualify as 'immediate family members', the Prosecutor 'clarifies that *immediate family members* include those persons considered protected under the right to family' and that '[t]hese are first and foremost those persons who can be considered SAID's *closest* relatives in the meaning of the word: his wife, his children, his parents, his siblings in direct lineage'.²¹

15. The Prosecutor further submits that 'SAID is also entitled to communicate with "other persons"', but, 'as this undefined group poses significant risks of circumventing the restrictions, [...] no calls should be authorised *before* the Prosecution has been able to participate and assist in duly verifying and vetting such

¹⁶ Email from the Single Judge to the Registry, at 09:34 hours.

¹⁷ ICC-01/14-01/21-29-Conf.

¹⁸ ICC-01/14-01/21-22-Conf, para. 5.

¹⁹ ICC-01/14-01/21-22-Conf, para. 15.

²⁰ ICC-01/14-01/21-22-Conf, para. 16.

²¹ ICC-01/14-01/21-22-Conf, para. 9 (emphases in original).

proposed contacts’.²² In the view of the Prosecutor, ‘[i]n the absence of such a process, the persons [Mr Said] calls should remain limited to the group of his immediate family members, who in turn should also have been at least verified to be his closest family members’.²³

16. Lastly, the Prosecutor avers that, ‘as part of its reporting, the Detention Unit should provide the Single Judge with the content of [Mr Said’s] communications’, as ‘[s]uch reports should inform the Single Judge whether there have been any breaches of the conditions so far’.²⁴

B. The Registry Report

17. The Registry ‘has no incidents to report to the Single Judge’.²⁵ In this regard, the Registry informs the Single Judge that ‘[t]he current COVID-19 measures include, *inter alia*, the suspension of all in-person visits, including legal and non-privileged family visits’ and ‘[t]he measures are in place until at least 18 March 2021, with the possibility of renewal’.²⁶ In addition, according to the Registry, ‘Mr Said has not yet submitted any request to add contacts to his non-privileged telephone list’.²⁷

18. The Registry further reports that ‘it is able to implement the active monitoring of Mr Said’s non-privileged telephone calls, twice a week, in either Sango or French, for 30 minutes each day of calling time’ and that ‘[REDACTED]’.²⁸ In addition, ‘[REDACTED]’.²⁹

19. In relation to the reference to ‘immediate family members’ in the First Restrictions Decision, the Registry ‘considers that this includes children, recognized partners or spouses, parents of the detained persons, and occasionally brothers and sisters’.³⁰ The Registry further specifies that ‘the procedure for verifying the identities and contact details for Mr Said’s contacts would entail 1) initial verification by [Detention Centre] Registry staff, followed by the additionally ordered

²² ICC-01/14-01/21-22-Conf, para. 10 (emphasis in original).

²³ ICC-01/14-01/21-22-Conf, para. 13.

²⁴ ICC-01/14-01/21-22-Conf, para. 14.

²⁵ ICC-01/14-01/21-23-Conf-Exp, para. 10.

²⁶ ICC-01/14-01/21-23-Conf-Exp, para. 11.

²⁷ ICC-01/14-01/21-23-Conf-Exp, para. 14.

²⁸ ICC-01/14-01/21-23-Conf-Exp, para. 16.

²⁹ ICC-01/14-01/21-23-Conf-Exp, para. 17.

³⁰ ICC-01/14-01/21-23-Conf-Exp, para. 19.

steps of 2) consultation with the [Victims and Witnesses Unit (the ‘VWU’)], and 3) consultation with the Prosecution’.³¹ The Registry ‘considers that only minimal private information from a detained person should be shared [with the Prosecutor], such as the name requested to be added’.³²

20. Lastly, the Registry contends that ‘the Prosecution states that “[o]n the basis of its experience in previous cases, the Prosecution wishes to avoid the risk that “other persons” may be added to the contact list of SAID without a thorough verification and vetting process”, but does not provide context or citation to these experiences, adding that detained persons in the past have committed serious breaches while at the [Detention Centre], impacting ICC proceedings’.³³

C. The Defence Response

21. The Defence ‘demande respectueusement [...] de ne pas renouveler les mesures restrictives prononcées le 3 février 2021.’³⁴ According to the Defence, ‘l’argumentation du Procureur [...] se limite essentiellement à présenter des allégations générales sur le rôle qu’aurait eu Monsieur Said dans différentes organisations qui seraient impliquées dans des luttes contre le gouvernement actuel de la République Centrafricaine’.³⁵ The Defence ‘ne dispose donc d’aucune information sur les personnes que le Procureur souhaiterait que Monsieur Said ne contacte pas, ni sur les raisons d’une telle demande’ and adds that ‘[p]eut-être ces informations sont-elles expurgées dans les documents auxquels a accès la Défense’.³⁶ As to the Prosecutor’s submission that Mr Said is ‘prone to violence’, the Defence asserts that the Prosecutor ‘ne renvoie [...] qu’à quatre éléments de preuve dont il n’est pas possible, aujourd’hui, de tester ni l’authenticité [...] ni la teneur’.³⁷ In addition, the Defence avers that ‘le Procureur allègue que si Monsieur Said était autorisé à communiquer librement avec le monde extérieur il en résulterait des risques pour le bon déroulé des enquêtes du Procureur et pour la sécurité de ses témoins’ and that ‘[c]ette allégation est encore une fois fondée sur des affirmations générales et non

³¹ ICC-01/14-01/21-23-Conf-Exp, para. 20.

³² ICC-01/14-01/21-23-Conf-Exp, para. 30.

³³ ICC-01/14-01/21-23-Conf-Exp, para. 32.

³⁴ ICC-01/14-01/21-29-Conf, para. 23.

³⁵ ICC-01/14-01/21-29-Conf, para. 25.

³⁶ ICC-01/14-01/21-29-Conf, para. 27.

³⁷ ICC-01/14-01/21-29-Conf, para. 29.

étayées’.³⁸ Furthermore, in the view of the Defence, ‘[a]insi, dans sa requête du 22 février 2021, le Procureur évoque de manière générique la « volatile security situation » en République Centrafricaine et le fait que « most witnesses continue to reside in CAR », sans plus de précision et sans expliquer, ni surtout démontrer, quels seraient, selon lui, les risques concrets et objectifs pour son enquête’.³⁹

22. In addition, ‘[s]i le Juge Unique devait néanmoins décider de prolonger les mesures de restrictions aux communications de Monsieur Said avec le monde extérieur, la Défense présente les observations suivantes’.⁴⁰

23. First, the Defence submits that ‘[s]oit les appels sont monitorés et il n’existe aucune raison de restreindre la liste des personnes avec qui Monsieur Said peut parler, soit il ne peut parler qu’à une liste restreinte de personnes vérifiées au préalable et dans ce cas, il n’existe aucune raison de monitorer les appels avec ces personnes spécifiquement désignées, vérifiées et approuvées’.⁴¹

24. Second, the Defence ‘pense utile d’obtenir des clarifications sur ce qui visé par « discussion related to the present case »’ in the First Restrictions Decision and understands this instruction ‘comme interdisant à Monsieur Said de discuter de tout élément non-public du dossier’.⁴²

25. Third, the Defence ‘estime qu’il n’existe aucune justification à la limitation de ces contacts à une durée de soixante minutes par semaine’ as ‘[l]imiter le temps de communication de Monsieur Said a une durée très inférieure à celle dont bénéficient les autres détenus reviendrait à lui imposer une mesure de restriction supplémentaire’.⁴³ The Defence adds that, ‘[d]ans la même sens, ajouter une restriction au nombre de fois où Monsieur Said peut avoir des contacts avec le monde extérieur ne saurait pas justifié’.⁴⁴ In this regard, the Defence contends that ‘ces mesures restrictives additionnelles pourraient avoir des effets délétères sur le bien-être de Monsieur Said et restreindre d’autant plus sa capacité d’avoir des interactions avec le monde extérieur et avec sa famille’ and that ‘les communications avec la

³⁸ ICC-01/14-01/21-29-Conf, para. 31.

³⁹ ICC-01/14-01/21-29-Conf, para. 32.

⁴⁰ ICC-01/14-01/21-29-Conf, para. 36.

⁴¹ ICC-01/14-01/21-29-Conf, para. 38.

⁴² ICC-01/14-01/21-29-Conf, paras 41, 43.

⁴³ ICC-01/14-01/21-29-Conf, para. 44.

⁴⁴ ICC-01/14-01/21-29-Conf, para. 44.

Centrafrique sont difficiles⁴⁵ In addition, the Defence takes the view that ‘il n’est pas possible de réduire le droit de Monsieur Said au respect de sa vie familiale uniquement parce que [REDACTED]’.⁴⁶

26. Fourth, with regard to the definition of immediate family members, the Defence submits that ‘il convient de prendre en compte le contexte culturel’.⁴⁷

27. Fifth, regarding the procedure to verify Mr Said’s contacts, the Defence argues that ‘il convient que la Défense de Monsieur Said soit associée à toute discussion sur la vérification des personnes avec qui Monsieur Said souhaite communiquer’ and that ‘il convient que la Défense soit informée des raisons pour lesquelles le Procureur pourrait s’opposer à l’ajout d’une personne sur la liste des personnes autorisées et qu’elle puisse répondre et déposer des observations’.⁴⁸

28. Lastly, ‘si les mesures devaient être prolongées, la Défense demande respectueusement [...] de ne le faire pour une période ne dépassant pas un mois, pour permettre une réévaluation fréquent de la nécessité de maintenir ces mesures’.⁴⁹

III. DETERMINATION BY THE SINGLE JUDGE

29. The Single Judge notes articles 21(1)(a) and (3) and 57(3)(a) of the Statute, regulations 97, 98, 99(1)(i) and 101 of the Regulations, and regulation 174 of the Regulations of the Registry.

30. At the outset, the Single Judge emphasises that, under the Court’s legal framework, any requests to extend contact restrictions must be assessed on the basis of concrete, specific, and up-to-date information.

31. The current contact restrictions in relation to Mr Said were imposed on the basis that, following the events for which the Warrant of Arrest was issued, Mr Said was reportedly involved in violent clashes as a member of the *Front Populaire pour la Renaissance de la Centrafrique*, and remained involved in or associated with this group.⁵⁰ Another group that was recently involved in armed hostilities in the Central African Republic (the ‘CAR’), *la Coalition pour les Patriotes et le Changement*,

⁴⁵ ICC-01/14-01/21-29-Conf, para. 45.

⁴⁶ ICC-01/14-01/21-29-Conf, para. 46.

⁴⁷ ICC-01/14-01/21-29-Conf, para. 50.

⁴⁸ ICC-01/14-01/21-29-Conf, paras 55-56.

⁴⁹ ICC-01/14-01/21-29-Conf, para. 59.

⁵⁰ ICC-01/14-01/21-9-US-Exp, para. 20.

spoke out against the transfer of Mr Said to the Court.⁵¹ More generally, victims and potential witnesses in the present case continue to face heightened risks due to the volatile security situation in the CAR, in combination with the Covid-19 pandemic.⁵² The Single Judge further notes that, while the Registry has not reported any incidents as to Mr Said's compliance with his contact restrictions, in-person visits at the Detention Centre have been suspended due to Covid-19 measures and Mr Said is yet to submit a request to add contacts to his non-privileged telephone list.⁵³

32. The Defence misappreciates that, according to regulation 101(2)(b) and (c) of the Regulations, it must be demonstrated 'that the Prosecutor has *reasonable grounds to believe* that such contact: [...] (b) *Could* prejudice or otherwise affect the outcome of the proceedings against a detained person, or any other investigation; [or] (c) *Could* be harmful to a detained person or any other person (emphasis added). Contrary to the Defence submissions,⁵⁴ the Prosecutor has demonstrated to the aforementioned threshold that, as a result of Mr Said's continuous involvement in or association with armed groups in the volatile context of the CAR, the consequences enumerated in regulation 101(2)(b) and (c) of the Regulations could materialise.

33. Accordingly, the Single Judge extends the contact restrictions in relation to Mr Said as specified in the First Restrictions Decision, subject to the specifications and modifications set forth below. The implementation of these restrictions is subject to any Covid-19 related measures imposed by the Registry.

34. The Single Judge recalls that, in the First Restrictions Decision, Mr Said's communications were provisionally limited to 'immediate family members'.⁵⁵ The Single Judge understands that the Prosecutor does not seek to have this limitation extended in view of the assertion that, '[a]ccording to the Regulations, SAID is also entitled to communicate with "other persons"'.⁵⁶ Accordingly, the Single Judge authorises Mr Said '[t]o communicate by letter or telephone with his or her family and other persons' pursuant to regulation 99(1)(i) of the Regulations under the same conditions identified in the First Restrictions Decision and as further specified and

⁵¹ CAR-OTP-2127-7746.

⁵² ICC-01/14-01/21-22-Conf, para. 7.

⁵³ ICC-01/14-01/21-23-Conf-Exp, paras 10, 11, 14.

⁵⁴ ICC-01/14-01/21-29-Conf, paras 25-35.

⁵⁵ ICC-01/14-01/21-9-US-Exp, para. 23.

⁵⁶ ICC-01/14-01/21-22-Conf, para. 10.

modified in the present decision.⁵⁷ As a result, the Single Judge considers that it is not necessary to define Mr Said's 'immediate family members'.⁵⁸ Having restored Mr Said's right to communicate with 'other persons', he will also be entitled to contact persons not considered to be 'immediate family members'.

35. In this regard, the Single Judge notes that the Prosecutor submits that 'no calls should be authorised *before* the Prosecution has been able to participate and assist in duly verifying and vetting such proposed contacts'.⁵⁹ The Single Judge clarifies that the Registry (including the VWU), which is a neutral organ and has overall responsibility for the management of the Detention Centre, is primarily responsible for the verification of the identities and contact details of Mr Said's non-privileged contacts. This means that the possibility of the Registry liaising with the Prosecutor is limited to situations that, in the assessment of the Registry, raise identifiable and specific risks regarding Mr Said's compliance with the contact restrictions. The Prosecutor's generic reference to '[REDACTED]' is insufficient to demonstrate that Mr Said cannot communicate with his non-privileged contacts unless the Prosecutor has been involved in the verification procedure.⁶⁰ Nonetheless, the Prosecutor remains at liberty to share any information with the Registry to facilitate the verification procedure. Even so, the ultimate decision as to whether a person's identity and contact details have been sufficiently verified is to be taken by the Registry. The Single Judge further agrees with the Registry that, if it proves necessary to consult with the Prosecutor in the aforementioned circumstances, only the information that is strictly necessary for the purposes of the verification procedure should be shared with the Prosecutor.⁶¹

36. It follows that the Defence request to be involved in the verification procedure must be rejected.⁶² This request is based on the assumption that the Registry will consult with the Prosecutor in the manner proposed by the Prosecutor.⁶³ However, the Single Judge has clarified that the Prosecutor's involvement is limited to the

⁵⁷ ICC-01/14-01/21-9-US-Exp, paras 21, 22, 24.

⁵⁸ ICC-01/14-01/21-22-Conf, para. 9; ICC-01/14-01/21-23-Conf-Exp, para. 19; ICC-01/14-01/21-29-Conf, paras 49-51.

⁵⁹ ICC-01/14-01/21-22-Conf, para. 10 (emphasis in original).

⁶⁰ ICC-01/14-01/21-22-Conf, para. 12.

⁶¹ ICC-01/14-01/21-23-Conf-Exp, para. 30.

⁶² ICC-01/14-01/21-29-Conf, paras 55-57.

⁶³ ICC-01/14-01/21-29-Conf, paras 53-54.

aforementioned circumstances and that the Registry, as a neutral organ, bears the ultimately responsibility concerning the verification procedure. Furthermore, as the contact restrictions in relation to Mr Said have been imposed on the basis of a decision pursuant to regulation 101(2) of the Regulations, the parties may, as a measure of last resort, request the Single Judge to review a decision by the Registry to include or decline to include a person in Mr Said's list of non-privileged contacts following verification of his or her identity and contact details.

37. Furthermore, the Single Judge rejects the Defence submission concerning active monitoring and the list of persons with whom Mr Said may communicate.⁶⁴ These measures serve different purposes and, therefore, the use of one measure does not negate the need to resort to the other measure. The list of persons with whom Mr Said may communicate is primarily intended to verify the identities and contact details of such persons. The use of active monitoring further ensures that Mr Said does not discuss the present case or that he uses coded or obscure language.

38. The Single Judge further clarifies that the reference to '[a]ny discussion related to the present case' arising from the First Restrictions Decision encompasses all substantive aspects of the present case and is not, as contended by the Defence, limited to aspects in the public domain.⁶⁵ The reason is that the Registry is not in a position to distinguish between public and non-public aspects and, as a result, the effective implementation of the contact restrictions in relation to Mr Said could not be guaranteed in the absence of such a limitation. However, contrary to the Defence's submission,⁶⁶ this limitation does not prevent Mr Said from expressing his general feelings about the present proceedings or discussing other aspects of his life at the Detention Centre, provided that such matters do not involve substantive aspects of the present case or that he is otherwise barred from discussing such matters.

39. In addition, the Single Judge rejects the Defence request as to the duration and frequency of Mr Said's non-privileged telephone calls.⁶⁷ The Defence has not substantiated its claim that Mr Said is treated differently from other persons in the

⁶⁴ ICC-01/14-01/21-29-Conf, paras 37-39.

⁶⁵ ICC-01/14-01/21-29-Conf, paras 40-43.

⁶⁶ ICC-01/14-01/21-29-Conf, para. 42.

⁶⁷ ICC-01/14-01/21-29-Conf, paras 44-48.

Detention Centre.⁶⁸ In any event, such assessments must be made in the circumstances of each case. Furthermore, contrary to the Defence submission,⁶⁹ this measure does not exclusively depend on the resources of the Registry, but constitutes a balance between the need to restrict Mr Said's contacts, his fundamental rights, and practical considerations. The Defence fails to demonstrate that, as a result of this balance, Mr Said's rights have been disproportionately limited. However, in view of the Registry's indication,⁷⁰ and having regard to the aforementioned factors, the Single Judge extends Mr Said's non-privileged telephone calls to two hours per week on a maximum of two days per week. The Single Judge leaves the further implementation of this directive to the Registry. However, the Single Judge clarifies that Mr Said's calling time must be calculated from the time that he commences speaking on the telephone until the end of the call, without including the time to set up the call, interruptions on the line, or any other factor impeding Mr Said from speaking.

40. The Single Judge has duly considered the Prosecutor's request to extend the contact restrictions in relation to Mr Said for a period of three months and the Defence indication that such a period should not exceed one month.⁷¹ It is recalled that the Single Judge previously rejected the Prosecutor's request to impose contact restrictions in relation to Mr Said for a period of three months.⁷² As the Prosecutor largely raises the same arguments, the Single Judge considers that the Prosecutor has not demonstrated that such a period is warranted.⁷³ At the same time, the Single Judge is not persuaded by the Defence submission that the contact restrictions in relation to Mr Said should not exceed one month. Balancing the need to impose contact restrictions in relation to Mr Said, his fundamental rights, and the need to review these restrictions in the course of the proceedings leading up to the confirmation of charges procedure on 5 October 2021, the Single Judge decides to extend the contact restrictions imposed by means of the First Restrictions Decision, as further specified

⁶⁸ ICC-01/14-01/21-29-Conf, para. 44.

⁶⁹ ICC-01/14-01/21-29-Conf, para. 46.

⁷⁰ ICC-01/14-01/21-23-Conf-Exp, para. 16.

⁷¹ ICC-01/14-01/21-22-Conf, paras 16-17; ICC-01/14-01/21-29-Conf, paras 58-59.

⁷² ICC-01/14-01/21-9-US-Exp, para. 26.

⁷³ In this regard, the Single Judge has disregarded the Prosecutor's reference to a decision adopted by Trial Chamber V in accordance with the 2 March 2021 decision, see ICC-01/14-01/21-28-Conf, para. 25.

and modified by means of the present decision, for two months as of the date of the present decision, namely 5 May 2021 (inclusive).

41. Lastly, the Single Judge reiterates that the Registry shall immediately inform the Single Judge of any violation of the contact restrictions in relation to Mr Said. In addition, the Registry shall submit a report on the implementation of these restrictions by no later than 21 April 2021 (as well as a redacted version if necessary). It is not necessary for the Registry to, as contended by the Prosecutor, ‘provide the Single Judge with the content of [Mr Said’s] communications’,⁷⁴ since it is the responsibility of the Registry to implement the contact restrictions and, if necessary, the Single Judge will assess any alleged violations of these restrictions. Should the Prosecutor wish to maintain the contact restrictions in relation to Mr Said, a reasoned request to this effect shall be submitted by no later than 26 April 2021. The Defence shall submit a response to such a request by the Prosecutor, if any, by no later than 29 April 2021.

⁷⁴ ICC-01/14-01/21-22-Conf, para. 14.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

- a) **GRANTS** the Prosecutor's Request to the extent specified in the present decision;
- b) **REJECTS** the relief sought in the Defence Response;
- c) **ORDERS** the Registrar to put in place the contact restrictions in relation to Mr Said, as set forth in the First Restrictions Decision and as specified and modified in the present decision, until 5 May 2021 (inclusive);
- d) **ORDERS** the Registrar to immediately inform the Single Judge of any violation of the contact restrictions in relation to Mr Said;
- e) **ORDERS** the Registrar to submit a report on the implementation of the contact restrictions in relation to Mr Said by no later than 21 April 2021 (as well as a redacted version if necessary); and
- f) **ORDERS** the Prosecutor, if she wishes to maintain the contact restrictions in relation to Mr Said, to submit a request to this effect by no later than 26 April 2021, and the Defence to submit a response to such a request by the Prosecutor, if any, by no later than 29 April 2021.

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



**Judge Rosario Salvatore Aitala,
Single Judge**

Dated this Tuesday, 26 April 2022

At The Hague, The Netherlands