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No. ICC-01/14-01/21

Date: 3 February 2021

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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 Contact Restrictions concerning Mahamat Said Abdel Kani in Pre-trial Detention”’,
3 February 2021, ICC-01/14-01/21-9-US-Exp

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

Detention Section

**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 Contact Restrictions concerning Mahamat Said Abdel Kani in Pre-trial Detention’.

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 received the ‘Prosecution’s Request for Contact Restrictions concerning Mahamat Said Abdel Kani in Pre-trial Detention’ (the ‘Request’).²
3. 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 (the ‘22 January 2021 Order’).³
4. On 24 January 2021, Mr Said was surrendered to the Court and arrived at the Court’s Detention Centre on 25 January 2021.⁴
5. 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.⁵
6. On 29 January 2021, in accordance with the Single Judge’s decision dated 26 January 2021⁶ and his further instructions dated 28 January 2021⁷, Mr Said

¹ ICC-01/14-01/21-2-US-Exp.

² ICC-01/14-133-US-Exp, together with under seal, *ex parte* (only available to the Prosecutor and the Registry), Annex A. On 1 February 2021, the Single Judge ordered the Prosecutor to submit a confidential redacted version of the Request, by no later than 3 February 2021, at 16:00 hours, see email from the Single Judge to the Prosecutor dated 1 February 2021, at 14:21 hours. On 3 February 2021, the Single Judge received the confidential redacted version of the Request, see ICC-01/14-133-Conf-Red.

³ Email from the Chamber to the Registry dated 22 January 2021, at 18:42 hours.

⁴ 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.

⁵ Decision on the designation of a Single Judge, ICC-01/14-01/21-3.

⁶ Decision on the convening of a hearing for the initial appearance of Mr Mahamat Said Abdel Kani, ICC-01/14-01/21-4.

appeared before the Chamber pursuant to article 60(1) of the Rome Statute (the ‘Statute’) and rule 121(1) of the Rules of Procedure and Evidence.

7. On 2 February 2021, the Single Judge received the ‘Registry Report [REDACTED]’ (the ‘Registry Report’).⁸

II. SUBMISSIONS RECEIVED BY THE SINGLE JUDGE

A. The Request

8. According to the Prosecutor, it is necessary and justified to restrict Mr Said’s contacts as ‘[t]here are reasonable grounds to believe that communications and contacts between the Suspect and his associates could affect the investigation and the outcome of the proceedings against him’.⁹ In this regard, the Prosecutor submits that M Said was ‘a high-ranking General within the *Front Populaire pour la Renaissance de la Centrafrique* (FPRC)’, [REDACTED].¹⁰ The Prosecutor adds that Mr Said [REDACTED].¹¹

9. Accordingly, the Prosecutor requests that Mr Said’s ‘telephone calls be restricted [...] to (i) calls to or from the persons identified in regulations 97 and 98 of the Regulations of the Court and regulation 174(1) of the Regulations of the Registry; and (ii) calls to any *immediate* family members, whose identities and contact details will have to be duly verified beforehand with the support of the Victims and Witnesses Unit in liaison with the Prosecution’.¹² The Prosecutor further avers that ‘any discussion related to the present case with the individuals referred to above under (ii) should be prohibited’ and ‘[t]he use of obscure and coded language during such calls should also be prohibited’.¹³ For these purposes, the Prosecutor requests that the following measures be imposed: (i) ‘the *active* monitoring of telephone calls’; (ii) ‘[t]he Chief Custody officer should be ordered to stop any call made in violation of these measures’; (iii) ‘the language of communication [should be limited] to French

⁷ ICC-01/14-01/21-T-001-ENG, pp 4-5.

⁸ ICC-01/14-01/21-8-US-Exp; a redacted, under seal, *ex parte* (only available to the Prosecutor and the Registry) version is also available, see ICC-01/14-01/21-8-US-Exp-Red. On 1 February 2021, the Single Judge ordered the Registry to submit a report [REDACTED] by no later than 2 February 2021, see email from the Single Judge to the Registry dated 1 February 2021, at 14:26 hours.

⁹ ICC-01/14-133-US-Exp, para. 6.

¹⁰ ICC-01/14-133-US-Exp, para. 6 (emphasis in original).

¹¹ ICC-01/14-133-US-Exp, para. 6.

¹² ICC-01/14-133-US-Exp, para. 8 (emphasis in original).

¹³ ICC-01/14-133-US-Exp, para. 8.

and Sango’; (iv) ‘the duration of telephone calls [should be limited] to 60 minutes per week, provided that this does not interfere with the management of the Detention Centre’; and (v) Mr Said ‘should also be prohibited from accessing the telephone facilities at the disposal of the other detainees of the Detention Centre’.¹⁴

10. The Prosecutor additionally argues that: (i) Mr Said ‘should be prohibited in written correspondence from using obscure or coded language or discussing the present case’; (ii) ‘[t]he Chief Custody Officer should be ordered to intercept or confiscate any written correspondence in violation of this measure’; and (iii) ‘the language of communication [should be limited] to French and Sango’.¹⁵

11. Moreover, the Prosecutor avers that ‘visits for the Suspect at the Detention Centre should also be restricted [...] with the exception of (i) visits from the persons identified in regulations 97 and 98 of the Regulations of the Court and regulation 174(1) of the Regulations of the Registry; (ii) visits from a limited number of individuals, such as family members, whose identities and contact details will have been duly verified beforehand with the support of the Victims and Witnesses Unit in liaison with the Prosecution’.¹⁶ The Prosecutor further argues that ‘any discussion related to the case should be prohibited’, ‘the language of communication should be limited to French and Sango’ and ‘the audio recording and active monitoring of such visits by a Court staff member fluent in French or Sango should be guaranteed’.¹⁷

12. The Prosecutor requests the aforementioned measures ‘for an initial period of three months upon which a renewed assessment should be conducted to appropriately balance the rights of the Suspect with the outlined risks to the ongoing investigations and proceedings’.¹⁸

13. Lastly, the Prosecutor ‘requests that the Suspect be separated from detainees Patrice Eduard NGAISSONA and Alfred YEKATOM’ on the basis that [REDACTED].¹⁹ In the view of the Prosecutor, [REDACTED].²⁰ This measure is also ‘requested for initially three months’.²¹

¹⁴ ICC-01/14-133-US-Exp, paras 9, 11 (emphasis in original).

¹⁵ ICC-01/14-133-US-Exp, paras 10, 11.

¹⁶ ICC-01/14-133-US-Exp, para. 12.

¹⁷ ICC-01/14-133-US-Exp, para. 12.

¹⁸ ICC-01/14-133-US-Exp, para. 13.

¹⁹ ICC-01/14-133-US-Exp, para. 14.

B. The Registry Report

14. The Registry indicates that [REDACTED].²²
15. As to the first option, the Registry notes that [REDACTED].²³ This option further requires [REDACTED].²⁴
16. With regard to the second option, the Registry observes that [REDACTED].²⁵ This option would also result in [REDACTED].²⁶ In addition, [REDACTED].²⁷
17. Lastly, according to the Registry, [REDACTED].²⁸

III. DETERMINATION BY THE SINGLE JUDGE

18. 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 of the Court (the ‘Regulations’) and regulation 174 of the Regulations of the Registry.

19. In particular, article 57(3)(a) of the Statute specifies that ‘the Pre-Trial Chamber may [...] [a]t the request of the Prosecutor, issue such orders and warrants as may be required for the purposes of an investigation’. In addition, regulation 101 of the Regulations provides, in the relevant part, that:

2. The Prosecutor may request the Chamber seized of the case to prohibit, regulate or set conditions for contact between a detained person and any other person, with the exception of counsel, if 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;
- (c) Could be harmful to a detained person or any other person;
- [...]
- (f) Is a threat to the protection of the rights and freedom of any person.

²⁰ ICC-01/14-133-US-Exp, para. 14.

²¹ ICC-01/14-133-US-Exp, para. 15.

²² ICC-01/14-01/21-8-US-Exp, para. 10.

²³ ICC-01/14-01/21-8-US-Exp, para. 12.

²⁴ ICC-01/14-01/21-8-US-Exp, para. 13.

²⁵ ICC-01/14-01/21-8-US-Exp, para. 11.

²⁶ ICC-01/14-01/21-8-US-Exp, para. 15.

²⁷ ICC-01/14-01/21-8-US-Exp, para. 16.

²⁸ ICC-01/14-01/21-8-US-Exp, para. 14.

3. The detained person shall be informed of the Prosecutor's request and shall be given the opportunity to be heard or to submit his or her views. In exceptional circumstances such as in an emergency, an order may be made prior to the detained person being informed of the request. In such a case, the detained person shall, as soon as practicable, be informed and shall be given the opportunity to be heard or to submit his or her views.

20. In so far as the Request concerns Mr Said's contacts by telephone, written correspondence and visits, the Single Judge is persuaded, in the light of the Prosecutor's submissions, that there are reasonable grounds to believe that contacts between Mr Said and his associates in the Central African Republic (the 'CAR') could affect the outcome of the proceedings against him or any other investigation, and that such contacts could be harmful to or a threat to other persons. When issuing the Warrant of Arrest, the Single Judge, *inter alia*, found that Mr Said 'was reportedly involved in the violent disruption of an electoral campaign in June 2015, as appointed member of the [FPRC], an ex-Seleka group [REDACTED] and that the FPRC was also 'believed to have been involved in armed clashes in the CAR as recently as October 2016'.²⁹ The Single Judge further considers that the Prosecutor's submissions in support of the present Request demonstrate Mr Said's continued involvement in or association with the FPRC.

21. On this basis, the Single Judge restricts Mr Said's telephone calls with the exception of telephone calls to or from: (i) the persons identified in regulations 97 and 98 of the Regulations and regulation 174(1) of the Regulations of the Registry; and (ii) immediate family members provided that their identities and contact details have been thoroughly verified with the support of the Victims and Witnesses Unit in liaison with the Prosecutor. Any discussion related to the present case with the individuals referred to under (ii) is prohibited. The use of obscure or coded language during such telephone calls is also not permitted.

22. In order to ensure that this directive is adhered to, the Single Judge orders the active monitoring of Mr Said's telephone calls on the basis of the aforementioned provisions. For such monitoring to be effective, the Single Judge: (i) limits the language of communication to French and Sango; (ii) limits the duration of telephone calls to 60 minutes per week, provided that this does not interfere with the

²⁹ ICC-01/14-42-US-Exp, para. 26.

management of the Detention Centre; (iii) orders Mr Said not to access the telephone facilities at the disposal of the other detainees of the Detention Centre; and (iv) orders the Chief Custody Officer to stop any telephone call made in violation of this directive. The Single Judge leaves the practical implementation of this directive to the Registry, depending on the availability of resources and languages.

23. In this regard, the Single Judge observes that the Prosecutor requests that, besides the persons identified in regulations 97 and 98 of the Regulations and regulation 174(1) of the Regulations of the Registry, Mr Said's telephone contacts be specifically limited to immediate family members. While the Single Judge provisionally grants this aspect of the Request for the purposes of the present decision, the Prosecutor will have to provide detailed and specific information as to the need for such a restriction, which specific family members qualify as 'immediate family members' and how this determination has been made if she wishes to have this restriction extended beyond the initial period for which these restrictions are granted.

24. The Single Judge further finds that Mr Said shall refrain from discussing the present case and using obscure or coded language in his written correspondence on the basis of the aforementioned provisions. For these purposes, the Single Judge further orders that: (i) the language of communication used in such correspondence shall be limited to French and Sango; and (ii) the Chief Custody Officer shall intercept or confiscate any written correspondence that does not adhere to this directive.

25. Moreover, the Single Judge restricts Mr Said's visits with the exception of visits from: (i) the persons identified in regulations 97 and 98 of the Regulations and regulation 174(1) of the Regulations of the Registry; and (ii) a limited number of individuals, such as family members, provided that their identities and contact details have been thoroughly verified with the support of the Victims and Witnesses Unit in liaison with the Prosecutor. Any discussion related to the case is prohibited during visits referred to under (ii). In order to ensure that this directive is adhered to, the Single Judge: (i) limits the language of communication of such visits to French and Sango; and (ii) orders the audio recording and active monitoring of such visits by a Court staff member fluent in French or Sango.

26. The Prosecutor requests that the aforementioned contact restrictions be imposed for an initial period of three months. The Single Judge observes that such a period significantly exceeds the initial periods of contact restrictions imposed in similar circumstances³⁰ and that, in any event, the Prosecutor has not substantiated the need for such an extended period. The Single Judge recalls that any restrictions of Mr Said's rights must be necessary and proportionate. Accordingly, balancing the need to restrict Mr Said's contacts against his fundamental rights, the Single Judge imposes the aforementioned restrictions for a period of one month as of the date of the present decision, that is until 3 March 2021 (inclusive).

27. The Registry shall immediately inform the Single Judge of any violation of the aforementioned contact restrictions. In addition, the Registry shall submit a report on the implementation of these restrictions, including an assessment of the feasibility of active monitoring and a description of the procedure for verifying and evaluating the identity and contact details of Mr Said's contacts, by no later than 24 February 2021 (as well as a redacted version if necessary).

28. In order to allow the Single Judge to adopt, if necessary, a further decision prior to the expiry of the contact restrictions imposed by means of the present decision, the Single Judge sets the following time limits pursuant to regulation 34 of the Regulations. Should the Prosecutor wish to maintain the aforementioned contact restrictions, a reasoned request to this effect shall be submitted by no later than 22 February 2021. The Defence shall submit a response to the Prosecutor's request, if any, by no later than 25 February 2021.

29. However, the Single Judge considers that the Prosecutor has not demonstrated that there are 'reasonable grounds to believe' that contact between Mr Said and Messrs Yekatom and Ngaïssona could affect the outcome of the proceedings against Mr Said or any other investigation, or that such contact could be harmful to or a threat to other persons. While the Single Judge has duly considered the allegation that [REDACTED], the Single Judge observes that this allegation pertains to events other than those for which the Warrant of Arrest in the present case has been issued and that the Prosecutor's general allegation fails to concretely demonstrate how

³⁰ See for instance ICC-01/14-01/18-11-Conf-Exp, paras 8, 11.

[REDACTED] could lead to any of the effects under regulation 101(2) of the Regulations. In addition, the Warrant of Arrest in respect of Mr Said relates to different events than the events relevant to the charges against Messrs Yekatom and Ngaïssona and, as a result, the Prosecutor will rely on different witnesses in the two cases. The Single Judge has further taken into account that, as detailed in the Registry Report, [REDACTED]. The Registry Report also reveals that [REDACTED]. It follows that the Single Judge rejects the Prosecutor's Request in so far as it pertains to the separation of Mr Said from Messrs Yekatom and Ngaïssona.

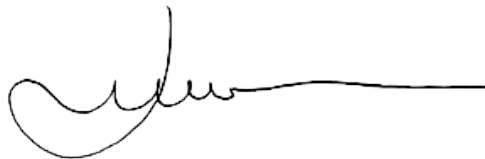
30. Lastly, the Single Judge recalls that the Chamber's 22 January 2021 Order, pursuant to which a number of restrictions in relation to Mr Said's contacts have been applied and Mr Said was separated from Messrs Yekatom and Ngaïssona upon Mr Said's arrival to the Detention Centre, was issued on a provisional basis. This order was based on regulation 101(3) of the Regulations in view of the existence of exceptional circumstances, namely the need to avoid irreparably prejudicing the proceedings or the investigation, or endangering the safety and wellbeing of (potential) witnesses. In accordance with the preceding determination, the separation of Mr Said from Messrs Yekatom and Ngaïssona shall be rescinded subject to the application of any Covid-19 related measures by the Detention Centre. In addition, the Single Judge is satisfied that, on the basis of the redacted version of the Request and the present decision, Mr Said has been informed within the meaning of regulation 101(3) of the Regulations and, if he so wishes, he may submit his views in writing by no later than 10 February 2021.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

- a) **GRANTS** the Request to the extent specified in the present decision;
- b) **ORDERS** the Registrar to immediately make the necessary arrangements to implement the present decision and to put in place the contact restrictions as specified in the present decision for a period of one month as of the date of the present decision, that is 3 March 2021 (inclusive);
- c) **ORDERS** the Registrar to immediately inform the Single Judge of any violation of the contact restrictions imposed by means of the present decision;

- d) **ORDERS** the Registrar to submit a report on the implementation of the contact restrictions imposed by means of the present decision, including an assessment of the feasibility of active monitoring and a description of the procedure for verifying and evaluating the identity and contact details of Mr Said's contacts, by no later than 24 February 2021 (as well as a redacted version if necessary);
- e) **REJECTS** the Request in so far as it concerns the separation of Mr Said from Messrs Yekatom and Ngaïssona;
- f) **ORDERS** the Registrar to rescind the provisional separation of Mr Said from Messrs Yekatom and Ngaïssona subject to the application of any Covid-19 related measures by the Detention Centre;
- g) **ORDERS** the Defence to submit its views within the meaning of regulation 101(3) of the Regulations, if any, by no later than 10 February 2021;
- h) **ORDERS** the Prosecutor, if she wishes to maintain the contact restrictions imposed by means of the present decision, to submit a request to this effect by no later than 22 February 2021, and the Defence to submit a response to such a request by the Prosecutor, if any, by no later than 25 February 2021; and
- i) **ORDERS** the Registrar to transfer the Request (ICC-01/14-133-US-Exp and ICC-01/14-133-Conf-Red) to the present case record (ICC-01/14-01/21) with the same level of classification.

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