



Original: English

No. ICC-01/14-01/21

Date: 5 May 2021

Date Public Redacted Version: 26 April 2022

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 Second Request for the Extension of Contact Restrictions”’, 5 May 2021, ICC-01/14-01/21-69-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 Second Request for the 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 2021,⁶ 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.⁷

¹ ICC-01/14-01/21-2-US-Exp (public redacted version filed on 17 February 2021 ([ICC-01/14-01/21-2-Red2](#))).

² Email from the Chamber, 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 (confidential redacted, *ex parte* (only available to the Registry, the Office of the Prosecutor and the Defence) version filed on 19 February 2021 (ICC-01/14-01/21-6-Conf-Exp-Red); confidential, lesser redacted, *ex parte* (only available to the Registry, the Office of the Prosecutor and the Defence) version filed on 18 March 2021 (ICC-01/14-01/21-6-Conf-Exp-Red2)).

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 [Transcript of 28 January 2021](#), ICC-01/14-01/21-T-001-ENG, pp. 4-5.

⁷ [Transcript of 29 January 2021](#), ICC-01/14-01/21-T-002-ENG.

6. On 3 February 2021, the Single Judge issued the ‘Decision on the “Prosecution’s Request for Contact Restrictions concerning Mahamat Said Abdel Kani in Pre-trial Detention”’ (the ‘First Restrictions Decision’).⁸ 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.⁹ However, the Single Judge rescinded the separation of Mr Said from Messrs Yekatom and Ngaïssona.¹⁰

7. On 5 March 2021, the Single Judge issued the ‘Decision on the ‘Prosecution’s Request for Extension of Contact Restrictions’ (the ‘Second Restrictions Decision’).¹¹ For a period of two months as of the date of that decision, the Single Judge extended the contact restrictions in relation to Mr Said as specified in the First Restrictions Decision.¹² However, the Single Judge authorised Mr Said ‘[t]o communicate by letter or telephone with [...] other persons’ pursuant to regulation 99(1)(i) of the Regulations of the Court (the ‘Regulations’).¹³

8. On 17 March 2021, following the recomposition of the Chambers by the Presidency,¹⁴ 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.¹⁵

9. On 21 April 2021, the Single Judge received the ‘Second Registry Report on the Implementation of the Restrictions on Contact Ordered by the Single Judge’ (the ‘Registry Report’).¹⁶

10. On 26 April 2021, the Single Judge received the ‘Prosecution’s Second Request for the Extension of Contact Restrictions’ (the ‘Prosecution’s Request’).¹⁷

⁸ ICC-01/14-01/21-9-US-Exp (confidential redacted version filed on 3 February 2021 (ICC-01/14-01/21-9-Conf-Red)).

⁹ First Restrictions Decision, ICC-01/14-01/21-9-Conf-Red, paras 20-26.

¹⁰ First Restrictions Decision, ICC-01/14-01/21-9-Conf-Red, para. 29.

¹¹ ICC-01/14-01/21-31-Conf. On 3 March 2021, the Single Judge had, 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), *see* email from the Single Judge, at 09:34 hours. On 12 April 2021, the Single Judge issued the ‘Decision on the Defence Request for Leave to Appeal the ‘Decision on the “Prosecution’s Request for Extension of Contact Restrictions”’’, thereby partially granting the Defence request for leave to appeal the Second Restrictions Decision, *see* ICC-01/14-01/21-53-Conf.

¹² Second Restrictions Decision, ICC-01/14-01/21-31-Conf, paras 31-33, 40.

¹³ Second Restrictions Decision, ICC-01/14-01/21-31-Conf, para. 34.

¹⁴ [Decision assigning judges to divisions and recomposing Chambers](#), 16 March 2021, ICC-01/14-01/21-40.

¹⁵ [Decision on the designation of a Single Judge](#), ICC-01/14-01/21-42.

¹⁶ ICC-01/14-01/21-57-Conf.

11. On 29 April 2021, the Single Judge received the ‘Réponse de la Défense à la « Prosecution’s Second Request for the Extension of Contact Restrictions » (ICC-01/14-01/21-61)’ (the ‘Defence Response’).¹⁸

II. SUBMISSIONS RECEIVED BY THE SINGLE JUDGE

A. The Registry Report

12. With regard to Mr Said’s ‘non-privileged telephone calls to authorized individuals whose identities and contact information are thoroughly verified’, the Registry ‘has no incidents to report’. The Registry further indicates ‘that recently there have been connection difficulties to telephone numbers from certain network providers in the Central African Republic, and therefore [it] has been unable to connect many of Mr Said’s contacts during this period’, but that the Information Management Services Section is seeking solutions.

13. In relation to non-privileged visits, the Registry ‘recalls that, following the COVID-19 Temporary Measures in place at the [Detention Centre], all in-person visits to the [Detention Centre] are currently suspended’. Lastly, the Registry ‘has no incidents to report regarding [Mr Said’s] written correspondence’.

B. The Prosecution’s Request

14. The Prosecution seeks a two-month extension of the contact restrictions currently imposed on Mr Said ‘under the same conditions’.

15. According to the Prosecution, ‘[t]he circumstances justifying the contact restrictions under regulation 101(2)(b) and (c) of the Regulations remain unchanged’. In this regard, the Prosecution avers that Mr Said ‘was not only a long time senior member of the FPRC but also before his arrest, took on a role within the *Coalition pour les Patriotes et le Changement* [the ‘CPC’], which comprises among other former members of the Seleka and Anti-Balaka members’.

16. The Prosecution further avers that [REDACTED].

¹⁷ ICC-01/14-01/21-61-Conf-Exp (confidential redacted version filed on 26 April 2021 (ICC-01/14-01/21-61-Conf-Red); confidential redacted corrected version filed on 28 April 2021 (ICC-01/14-01/21-61-Conf-Red-Corr)), together with confidential, *ex parte* (only available to the Office of the Prosecutor) Annex A (ICC-01/14-01/21-61-Conf-Exp-AnxA).

¹⁸ ICC-01/14-01/21-65-Conf.

C. The Defence Response

17. The Defence requests the Single Judge to reject the Prosecution's Request. It first submits that the Prosecution does not show the existence of any concrete and specific risks listed under regulation 101(2) of the Regulations and only refers to the general security situation in the Central African Republic. The Defence adds that '[REDACTED]'.

18. Specifically, the Defence submits that 'la CPC – comme l'était avant elle la Seleka et les anti-Balakas [...] – est une nébuleuse d'organisations disparates, à la composition fluctuante, et aux allégeances fluides, comme en atteste le fait que François Bozizé, hier combattu par une partie des groupes qui formeraient la CPC, en aurait pris la direction'. Therefore, according to the Defence, the Prosecution failed to show any link between that group and Mr Said.

19. Secondly, the Defence submits that the Prosecution does not explain how it determined that witnesses would 'be particularly at risk from disclosure to' Mr Said.

20. Thirdly, as regards the [REDACTED], the Defence submits that the Prosecution's assertion that '[REDACTED]', is speculative and cannot justify limiting Mr Said's rights.

21. In the alternative, the Defence submits that, if the Single Judge decides to maintain the contact restrictions, 'ce régime peut être assoupli'.

22. In that regard, the Defence requests the Single Judge: (i) to extend the time allotted to Mr Said to make telephone calls to four hours, three times a week (the 'First Alternative Defence Request'); and (ii) to limit the contact restrictions to one month (the 'Second Alternative Defence Request').

III. DETERMINATION BY THE SINGLE JUDGE

23. 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.

24. 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.

25. Having carefully considered the parties' submissions, the Single Judge remains persuaded that there are reasonable grounds to believe that contact between Mr Said and other persons '[c]ould prejudice or otherwise affect the outcome of the proceedings against a detained person, or any other investigation' and/or '[c]ould be harmful to a detained person or any other person' within the meaning of regulation 101(2)(b) and (c) of the Regulations. The basis for the contact restrictions in relation to Mr Said, namely 'Mr Said's continuous involvement in or association with armed groups in the volatile context of the [Central African Republic]',¹⁹ has not changed since issuing the Second Restrictions Decision.

26. Furthermore, the Single Judge notes with concern [REDACTED]. This [REDACTED], specifically demonstrates that witnesses in these proceedings face genuine security risks in the volatile situation in the Central African Republic.

27. The Single Judge further notes that the Prosecution is 'still in the process of assessing and implementing necessary protection measures for witnesses identified to be particularly at risk from disclosure' to Mr Said. In addition and more generally, following the Second Restrictions Decision, the Prosecution has commenced disclosing evidence and other material, which entails that Mr Said is now privy to sensitive information, including the names of certain witnesses.

28. As to the Defence's submissions, the Single Judge considers that the Defence continues to misappreciate the threshold arising from regulation 101(2)(b) and (c) of the Regulations, namely '*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), and recalls that it has already been determined that, as a result of the aforementioned factors, these risks could materialise.²⁰ Furthermore, even assuming that the CPC has an indistinct structure and a fluctuating composition, this does not detract from the fact that it has expressed its support for Mr Said in relation to his transfer to the Court.²¹ This connection constitutes a concrete risk for witness interference if contact restrictions would be lifted. Lastly, the

¹⁹ Second Restrictions Decision, ICC-01/14-01/21-31-Conf, para. 32. *See also* First Restrictions Decision, ICC-01/14-01/21-9-Conf-Red, para. 20.

²⁰ Second Restrictions Decision, ICC-01/14-01/21-31-Conf, para. 32.

²¹ Second Restrictions Decision, ICC-01/14-01/21-31-Conf, para. 31.

Defence's contention that paragraph 26 of the Warrant of Arrest refers to allegations dated from 2015 or 2016 cannot be considered in isolation. Mr Said remained involved in or associated with armed groups following the events for which the Warrant of Arrest was issued and such connections have persisted since.

29. The Single Judge has duly noted that the Registry has not had any incidents to report in relation to Mr Said's non-privileged telephone calls and written correspondence. However, on balance, the aforementioned considerations require the contact restrictions in relation to Mr Said, as specified in the First Restrictions Decision and the Second Restrictions Decision, to be extended, subject to the findings set forth below.

30. The Single Judge has duly considered the Second Alternative Defence Request. However, the Defence omits to consider that an identical request has been previously rejected and that the restrictions in relation to Mr Said's contacts are being periodically reviewed.²² This Request is, therefore, rejected. Accordingly, balancing the need to impose contact restrictions, Mr Said's fundamental rights, and the need to review these restrictions in the course of the proceedings leading up to the confirmation of charges hearing on 5 October 2021, the Single Judge decides to extend these contact restrictions for two months as of the date of the present decision, namely 5 July 2021 (inclusive). The implementation of these restrictions is subject to any Covid-19 related measures imposed by the Registry.

31. Nonetheless, the Single Judge emphasises that, due to the potentially increasing impact on the psychological well-being of Mr Said as the proceedings preceding the confirmation of charges hearing progress, the Prosecution will, if it intends to have these restrictions extended, need to additionally substantiate its request in accordance with the stage of the proceedings.

32. The Single Judge further 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 23 June 2021 (as well as a redacted version if necessary). Should the Prosecution wish to maintain the contact restrictions in relation to Mr Said, a reasoned

²² See Second Restrictions Decision, ICC-01/14-01/21-31-Conf, para. 40.

and substantiated request to this effect shall be submitted by no later than 25 June 2021. The Defence shall submit a response to such a request by the Prosecution, if any, by no later than 30 June 2021.

33. Lastly, as to the First Alternative Defence Request, the Single Judge finds it appropriate to extend Mr Said's non-privileged telephone calls to three hours per week on a maximum of two days per week. In this regard, the Single Judge has considered the Registry's submissions in connection with the Second Restrictions Decision that '[REDACTED]'²³ and the current difficulties in establishing certain telephone connections in the Central African Republic.²⁴ It is reiterated that the time allocated to Mr Said to make non-privileged telephone calls should be calculated from the moment that the connection has been established and without calculating any interruptions on the line.²⁵ The Single Judge leaves the further implementation of this directive to the Registry. Therefore, this request is granted in part.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

- a) **GRANTS** the Prosecution's Request;
- b) **GRANTS** the First Alternative Defence Request to the extent specified in the present decision;
- c) **REJECTS** the Second Alternative Defence Request;
- d) **ORDERS** the Registrar to put in place the contact restrictions in relation to Mr Said, as set forth in the First Restrictions Decision and the Second Restrictions Decision and as modified in the present decision, until 5 July 2021 (inclusive);
- e) **ORDERS** the Registrar to immediately inform the Single Judge of any violation of the contact restrictions in relation to Mr Said;
- f) **ORDERS** the Registrar to submit a report on the implementation of the contact restrictions in relation to Mr Said by no later than 23 June 2021 (as well as a redacted version if necessary); and
- g) **ORDERS** the Prosecution, if it wishes to maintain the contact restrictions in relation to Mr Said, to submit a reasoned and substantiated request to this


²³ Registry Report on the Implementation of the Restrictions on Contact Ordered by the Single Judge, 24 February 2021, ICC-01/14-01/21-23-Conf-Exp, para. 16.

²⁴ Registry Report, ICC-01/14-01/21-57-Conf, para. 10.

²⁵ Second Restrictions Decision, ICC-01/14-01/21-31-Conf, para. 39.

effect by no later than 25 June 2021, and the Defence to submit a response to such a request by the Prosecution, if any, by no later than 30 June 2021.

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

A handwritten signature in black ink, consisting of a large, stylized initial 'R' followed by a series of loops and a long horizontal stroke extending to the right.

**Judge Rosario Salvatore Aitala,
Single Judge**

Dated this Tuesday, 26 April 2022

At The Hague, The Netherlands