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Date: 3 September 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 fourth request for the extension of contact restrictions', 3 September 2021, ICC-01/14-01/21-159-Conf

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

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JUDGE ROSARIO SALVATORE AITALA, acting as Single Judge on behalf of Pre-Trial Chamber II of the International Criminal Court (the ‘Court’), issues this ‘Decision on the Prosecution’s fourth request for the extension of contact restrictions’.

I. PROCEDURAL HISTORY

1. The Single Judge recalls the relevant procedural history as set out in previous decisions.¹
2. On 5 July 2021, the Single Judge issued the Fourth Contact Restrictions Decision, instructing the Registry to put in place contact restrictions in relation to Mr Said, as set forth in previous contact restrictions decisions and with modification, namely with the extension of the duration of Mr Said’s non-privileged telephone calls to four hours per week on a maximum of two days per week, until 3 September 2021 (inclusive).²
3. On 20 August 2021, the Registry filed its ‘Fourth Registry Report on the Implementation of the Restrictions on Contact Ordered by the Single Judge’ (the ‘Registry’s Report’).³
4. On 23 August 2021, the Prosecution filed the ‘Prosecution’s Fourth Request for the Extension of Contact Restrictions’ (the ‘Prosecution’s Request’).⁴
5. On 27 August 2021, the Defence filed its response to the Prosecution’s Request (the ‘Defence’s Response’).⁵

II. SUBMISSIONS

A. The Registry’s Report

6. The Registry submits that it has no incidents to report in relation to Mr Said’s non-privileged telephone calls, non-privileged visits and non-privileged written

¹ See e.g. Decision on the Prosecution’s third request for the extension of contact restrictions”, 5 July 2021, ICC-01/14-01/21-116-Conf (the ‘Fourth Contact Restrictions Decision’), paras 1-17.

² Fourth Contact Restrictions Decision, ICC-01/14-01/21-116-Conf, pp. 11-12.

³ ICC-01/14-01/21-147-Conf.

⁴ ICC-01/14-01/21-148-Conf, with confidential *ex parte* annex A (only available to the Prosecution and VWU) (ICC-01/14-01/21-148-Conf-Exp-AnxA).

⁵ Réponse de la Défense à la « Prosecution’s Fourth Request for the Extension of Contact Restrictions » (ICC-01/14-01/21-148-Conf), ICC-01/14-01/21-153-Conf.

correspondences. In addition, the Registry informs the Single Judge that in-person non-privileged visits at the Court's Detention Centre resumed on 15 July 2021.

B. The Prosecution's Request

7. The Prosecution requests that the contact restrictions imposed on Mr Said be extended for another two months. The Prosecution submits that the circumstances justifying the contact restrictions under regulation 101(2)(b) and (c) of the Regulations of the Court (the 'Regulations') have not changed and that they 'are necessary to protect witnesses, victims, and the ongoing investigation in the Central African Republic' (the 'CAR'), '[REDACTED]'. The Prosecution submits that, in addition to previously [REDACTED], [REDACTED]. In the Prosecution's view, [REDACTED].

8. Moreover, the Prosecution submits that the *Coalition pour les Patriotes et le Changement* (the 'CPC'), which previously expressed its support to Mr Said, maintains its military presence in the CAR and continues to engage in violent operations, including attacks against civilians. Further, the Prosecution avers that the security situation in the CAR remains volatile and refers to Resolution 2588 (2021) adopted by the United Nations Security Council on 29 July 2021 in this regard.

9. The Prosecution also argues that since all the evidence it intends to rely upon at the confirmation hearing has now been disclosed, there is a risk that, if the contact restrictions are lifted or relaxed, Mr Said could directly contact Prosecution witnesses or communicate information about such witnesses to his associates and supporters in the CAR.

10. Lastly, the Prosecution submits that Mr Said's compliance with the conditions of his detention does not mitigate the need for the contact restrictions for the same reasons as put forward in its previous requests for extensions. In addition, the Prosecution advances that the current restrictions are sufficient and proportionate, as there are no less intrusive measures available to mitigate the risks, Mr Said is currently allowed to contact his immediate family and other persons, and there is no indication that the security situation will improve in the coming months.

C. The Defence's Response

11. The Defence submits that the Prosecution's Request should be rejected. Concerning the [REDACTED], the Defence submits that, as in previous instances, the Prosecutions relies on statements of its witnesses without having verified the information independently, and that [REDACTED] have no link with Mr Said. It argues that most of the [REDACTED] occurred before Mr Said's arrest and as such possible leaks of the identities of witnesses must have come from other sources. Further, the Defence avers that it does not have the necessary information to verify the veracity of the [REDACTED], and that requiring the Defence to do so results in a reversal of the burden of proof.

12. Concerning the security situation in the CAR, the Defence submits that the only statement upon which the Prosecution relies concerning Mr Said's alleged link with the CPC does not refer to Mr Said's alleged role in the CPC and in fact suggests that his function with the *Front Populaire pour la Renaissance de la Centrafrique* (the 'FPRC') ceased. Furthermore, the Defence submits that the Prosecution cannot rely on the United Nations Security Council's statement that the situation in the CAR constitutes a threat to international peace and security to argue that contact restrictions are justified in the case of Mr Said.

13. In the Defence's view, the alleged risk associated with the fact that Mr Said has now access to all evidence is theoretical, and the Prosecution fails to demonstrate a specific and objective risk to identified witnesses or to ongoing investigations. The Defence submits that accepting the Prosecution's argument would mean that the suspect's contacts should always be restricted, as in every case information about witnesses is disclosed to the suspect.

14. In the alternative, should the contact restrictions be extended, the Defence requests that such restrictions be lessened as follows: (i) Mr Said should be allowed to communicate with his family three times a week (the 'First Defence's Alternative Request'); and (ii) the restrictions be limited to one month (the 'Second Defence's Alternative Request').

III. DETERMINATION BY THE SINGLE JUDGE

15. The Single Judge notes articles 21(1)(a), 21(3), 57(3)(a) and 67 of the Rome Statute, regulations 97, 98, 99(1)(i), 100 and 101 of the Regulations and regulations 174 and 175 of the Regulations of the Registry.

16. The Single Judge recalls 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.⁶

17. Having carefully considered the parties' submissions, the Single Judge finds that the previously ordered restrictions to Mr Said's contacts continue to be necessary. For the reasons set out in this decision, the Single Judge remains persuaded 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.

18. The Single Judge notes with concern the recent [REDACTED]. Of particular concern is [REDACTED].⁷ The Single Judge notes [REDACTED]. The Single Judge further notes that [REDACTED].⁸ Although there is no suggestion that [REDACTED] are directly linked to Mr Said, they demonstrate that Prosecution witnesses in the present proceedings continue to face concrete and genuine risks to their safety.

19. Moreover, the Single Judge observes that the circumstances relied upon in the previous decisions on contact restrictions continue to exist. In particular, Mr Said's involvement, association or connection with armed groups in the ongoing volatile context of the CAR remains unchanged since the issuance of the Fourth Contact Restrictions Decision.⁹ In this respect, the Single Judge notes that, since the issuance of that decision, the CPC appears to have engaged in violent acts, including against the civilian population in the CAR, as confirmed by the recent resolution of the United

⁶ See e.g. Fourth Contact Restrictions Decision, ICC-01/14-01/21-116-Conf, para. 29.

⁷ Prosecution's Request, ICC-01/14-01/21-148-Conf, para. 5.

⁸ Prosecution's Request, ICC-01/14-01/21-148-Conf, paras 6-7.

⁹ Fourth Contact Restrictions Decision, ICC-01/14-01/21-116-Conf, para. 30.

Nations Security Council.¹⁰ The Single Judge continues to be persuaded that Mr Said's association or connection with the CPC and that group's continuing involvement in violent acts constitute a concrete risk for witness interference, should the current contact restrictions be lifted.¹¹

20. The Single Judge further notes that the Registry has not reported any incidents of violation of the conditions imposed on Mr Said's non-privileged telephone calls, non-privileged visits and written correspondence.¹² However, having carefully balanced Mr Said's fundamental rights and the above-mentioned serious risks to the safety of witnesses and victims, the Single Judge finds that Mr Said's compliance with the said conditions is not at present a sufficient basis for the lifting of the contact restrictions. The information currently before the Single Judge is sufficiently concrete, specific and up-to-date so as to justify the extension of the contact restrictions.

21. The Single Judge notes the Prosecution's submissions concerning the risk associated with the completion of the disclosure of the material it intends to rely upon at the confirmation hearing. The Single Judge is not convinced by this argument. Without any further specific information as to how the completion of the disclosure process could result in potential risks, the Prosecution's submissions improperly imply that the completion of the disclosure process automatically leads to the imposition of contact restrictions. Accordingly, the Single Judge rejects the Prosecution's submissions in this regard. Nonetheless, for the reasons set out above, the Single Judge considers that the extension of the contact restrictions is warranted in the present circumstances. Therefore, the Single Judge decides to extend the contact restrictions imposed on Mr Said as specified in the Fourth Contact Restrictions Decision.

22. Concerning the First Defence's Alternative Request, the Single Judge notes that the Defence's Response repeats previous requests to extend Mr Said's non-privileged

¹⁰ Prosecution's Request, ICC-01/14-01/21-148-Conf, para. 9.

¹¹ See Decision on the 'Prosecution's Request for Extension of Contact Restrictions, 5 March 2021, ICC-01/14-01/21-31-Conf, para. 31; Decision on the 'Prosecution's Second Request for the Extension of Contact Restrictions, 5 May 2021, ICC-01/14-01/21-69-Conf (the 'Third Contact Restrictions Decision'), para. 28. See also Fourth Contact Restrictions Decision, ICC-01/14-01/21-116-Conf, para. 30.

¹² Registry's Report, ICC-01/14-01/21-147-Conf, paras 5-7.

telephone calls to three times a week.¹³ The Single Judge recalls the previous decisions rejecting those requests.¹⁴ In particular, in the Fourth Contact Restrictions Decision, the Single Judge rejected the Defence's request to permit Mr Said to make non-privileged telephone calls three times a week, in light of the Registry's submissions on the feasibility of adding additional days of calling time.¹⁵ Instead, the duration of Mr Said's non-privileged calls was extended to four hours per week on a maximum of two days per week.¹⁶ Other than merely repeating its previous requests, the Defence does not present any reasons that would justify an increase in the number of days for Mr Said's non-privileged calls, despite the Registry's submissions. Accordingly, the First Defence's Alternative Request is rejected.

23. The Single Judge notes that the Prosecution requests that the said restrictions be extended for a period of two months. Having considered the nature and recurrence of [REDACTED] in this case, the unstable and volatile situation in the CAR, the advanced stage of the pre-trial proceedings, as well as Mr Said's fundamental rights and psychological well-being, the Single Judge considers it appropriate to extend the said restrictions until the end of the pre-trial proceedings. The Second Defence's Alternative Request is thereby rejected. The Single Judge recalls that the implementation of the contact restrictions is subject to any Covid-19 related measures imposed by the Registry, and that the latter shall immediately inform the Single Judge of any violation of the contact restrictions in relation to Mr Said.

24. The Single Judge further notes the Registry's submission that in-person non-privileged visits at the Court's Detention Centre resumed on 15 July 2021.¹⁷ The Single Judge considers that, although these visits are subject to certain restrictions, they allow

¹³ See Réponse de la Défense à la « Prosecution's Second Request for the Extension of Contact Restrictions » (ICC-01/14-01/21-61), 29 April 2021, ICC-01/14-01/21-65-Conf; para. 69; Réponse de la Défense à la « Prosecution's Third Request for the Extension of Contact Restrictions » dated 25 June 2021 » (ICC-01/14-01/21-108-Conf-Red), 30 June 2021, ICC-01/14-01/21-113-Conf, para. 70.

¹⁴ See Third Contact Restrictions Decision, ICC-01/14-01/21-69-Conf, para. 33; Fourth Contact Restrictions Decision, ICC-01/14-01/21-116-Conf, para. 35.

¹⁵ 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 (confidential redacted version filed on 24 February 2021, (ICC-01/14-01/21-23-Conf-Red)), para. 16.

¹⁶ Fourth Contact Restrictions Decision, ICC-01/14-01/21-116-Conf, para. 35.

¹⁷ Registry's Report, ICC-01/14-01/21-147-Conf, para. 6.

Mr Said to enjoy meaningful contacts with members of his family and alleviate the difficulties that Mr Said may be facing as a result of the current contact restrictions.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

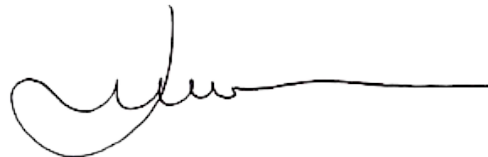
GRANTS the Prosecution's Request;

REJECTS the First and Second Defence's Alternative Requests;

INSTRUCTS the Registry to put in place the contact restrictions in relation to Mr Said, as set forth in the Fourth Contact Restrictions Decision until the end of the pre-trial proceedings; and

ORDERS the Registry to immediately inform the Single Judge of any violation of the contact restrictions in relation to Mr Said.

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