



Original: English

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

Date: 30 May 2022

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 *PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Public

**Prosecution's observations on the review of detention of Mr Mahamat
Said Abdel Kani**

Source: Office of the Prosecutor

Document 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 QC
Mr Mame Mandiaye Niang

Counsel for the Defence

Ms Jennifer Naouri
Mr Dov Jacobs

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms Sarah Pellet
Tars Van Litsenborgh

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

I. INTRODUCTION

1. In accordance with Trial Chamber VI (“Chamber”)’s instruction of 17 May 2022,¹ the Prosecution hereby submits its observations on the periodic review of Mahamat Said Abdel Kani (“Mr SAID”)’s detention under rule 118(2) of the Rules of Procedure and Evidence (“Rules”).

2. Mr SAID’s continued detention remains necessary as the conditions warranting his detention under articles 58(1)(b)(i) and (ii) of the Rome Statute (“Statute”) continue to be met. There has been no change in circumstances that would warrant a change of the most recent decision of this Chamber in which it ordered Mr SAID’s continued detention.² To the contrary, with the trial to start in less than four months, the necessity for his continued detention is greater in order to ensure his appearance at trial, minimise any risks to the safety and security of witnesses, and to ensure the integrity of the proceedings. Mr SAID has not been detained for an unreasonable period of time. There has also been no delay in the conduct of the case that would require the Chamber to consider his release under article 60(4) of the Statute.

II. SUBMISSIONS

A. **There is no change in circumstances that would justify modification of Mr SAID’s detention**

3. The Appeals Chamber has confirmed that where the conditions under article 58(1) continue to be met, article 60(2) of the Statute requires that the person must remain in detention.³ The Appeals Chamber found changed circumstances to exist where there is a “change in some or all of the facts underlying a previous decision on

¹ Trial Chamber VI’s email dated 17 May 2022 at 13:09 sent to the Parties and Participants.

² ICC-01/14-01/21-247-Conf, confirmed by the Appeals Chamber, ICC-01/14-01/21-318 OA3 (public redacted version filed on 3 March 2022 (ICC-01/14-01/21-247-Red)).

³ ICC-01/04-01/06-824 (OA 7), at para. 134.

detention, or a new fact satisfying a Chamber that a modification of its prior ruling is necessary.”⁴ Where no changed circumstances are found to exist, “the Chamber is not required to further review the ruling on release or detention.”⁵

4. The Appeals Chamber has also held that the Prosecution does not have to re-establish circumstances that have already been established.⁶ For each periodic review of detention, the Prosecution must make submissions as to whether there has been any change in the circumstances that previously justified detention, and must bring to the attention of the Chamber any other relevant information that it is aware of that relates to the question of detention or release.⁷

5. As set out below, the Prosecution is not aware of any new facts or of any changes in facts that would require the Chamber to depart from its previous decision on Mr SAID’s continued detention.⁸

B. Mr SAID’s continued detention remains necessary to ensure his appearance at trial (article 58(1)(b)(i))

6. Mr SAID’s continued detention remains necessary under article 58(1)(b)(i) of the Statute to ensure his appearance at trial.⁹ In its decision on interim release, this Chamber articulated a list of factors which contributed to the risk that Mr SAID would not appear at trial, including that: (i) he is aware of the risk of incurring a lengthy sentence that may motivate him to abscond if given the opportunity; (ii) his solemn undertakings do not sufficiently alleviate the risk of absconding; (iii) he can still count on the support of former comrades, some of whom still occupy senior positions; (iv) there is a possibility that the FPRC, as an organisation or its members in their private

⁴ ICC-01/05-01/08-1019 (OA 4), at paras. 47-52 (citing ICC-01/04-01/07-572 (OA 4), at para. 14) and ICC-01/05-01/08-1626-Red, at para. 71.

⁵ ICC-02/11-01/11-548-Red (OA 4), at para. 40 (citing ICC-01/05-01/08-2151 (OA 10), at para. 1).

⁶ ICC-01/05-01/08-1019 (OA 4), at para. 51.

⁷ *Ibid.*, at paras. 2 and 51.

⁸ ICC-01/14-01/21-247-Red.

⁹ See ICC-01/14-01/21-236-Red. See also ICC-01/14-01/21-T-007-CONF-ENG ET.

capacity, might offer him assistance; and (v) he might take advantage of the current situation of insecurity and instability in the CAR to extract himself from the reach of the CAR authorities.¹⁰ All these factors continue to apply. Moreover, the Prosecution submits that according to recent media coverage, the FPRC and its off-shoot rebel groups and partner groups continue to engage in armed hostilities.¹¹ Their behaviour shows that Mr SAID's support network is still armed and continues to destabilise the CAR, including by killing CAR soldiers.

7. Furthermore, the Prosecution is not aware of any new factors indicating that Mr SAID would be less likely to abscond if released. To the contrary, that likelihood has increased, since the trial is set to start in less than four months. Mr SAID is charged with 7 counts of war crimes and crimes against humanity, including torture, imprisonment and persecution.¹² If convicted, he will likely receive a considerable prison sentence. As previously noted by the Chamber, the knowledge of the risk of incurring a lengthy sentence may motivate the Accused to abscond if given the opportunity.¹³

C. Mr SAID's detention remains necessary to ensure that he does not obstruct or endanger court proceedings (article 58(1)(b)(ii))

8. The continued detention of Mr SAID also remains necessary under article 58(1)(b)(ii) of the Statute to ensure that the court proceedings are not obstructed or endangered. In its decision on interim release, this Chamber noted that "Mr Said does still have support in the CAR and that, if he were released, he would be in a favourable position to effectively interfere with ongoing investigations or proceedings, either

¹⁰ *Ibid* at paras. 26-29.

¹¹ See Centrafrique: Au Moins huit soldats tués dans une attaque armée, at <https://www.aa.com.tr/fr/afrique/centrafrique-au-moins-huit-soldats-tues-dans-une-attaque-armee/2595690>, last viewed on 29 May 2022; UPC rebels kill Central African Republic Soldiers in Ouadda, <https://humanglemedia.com/upc-rebels-kill-central-african-republic-soldiers-in-ouadda>, last visited on 29 May 2022.

¹² ICC-01/14-01/21-218-Conf (public redacted version filed on 9 December 2021 (ICC-01/14-01/21-218-Red)).

¹³ ICC-01/14-01/21-247-Red at para. 26.

personally or through third persons”¹⁴ and that “there would be little to prevent Mr Said from harming or intimidating witnesses in this case if he were to be released to the CAR or to cause others to do so”.¹⁵ This risk remains as Mr SAID currently knows the identity of the vast majority of the witnesses, including those who will testify in court, and has now received disclosure of all evidence concerning the OCRB charges.

9. While the Prosecution’s investigation has drawn to an end, ensuring the cooperation and protection of witnesses and their appearance for testimony is a paramount concern at this stage of the proceedings. This process is not only logistically challenging, but also depends on the witnesses’ sense of security. The release of Mr SAID from detention would have a profoundly negative effect in this regard. Moreover, as previously recognised by the Chamber, Mr SAID may have a strong motive to influence the Prosecution’s witnesses before the start of the trial.¹⁶ In light of his apparent continuous influence over and support in the CAR, the risk of Mr SAID or his supporters exerting pressure on witnesses to change their testimony, either directly or indirectly, if he were released, remains high.

D. There has been no delay caused by the Prosecution

10. Finally, Mr SAID has not been detained for an unreasonable amount of time due to inexcusable delay of the Prosecution (article 60(4) of the Statute). The Prosecution has met all deadlines set by the Chamber to prepare its case in an expeditious manner and will continue to do so.

¹⁴ ICC-01/14-01/21-247-Red at para. 33.

¹⁵ *Ibid* at para. 34.

¹⁶ ICC-01/14-01/21-247-Red at para. 35.

III. RELIEF REQUESTED

11. For the aforementioned reasons, the Prosecution requests that the Chamber order the continued detention of Mr SAID in accordance with articles 60 and 58(1) of the Statute.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a dot.

Karim A. A. Khan QC, Prosecutor

Dated this 30th day of May 2022

At the Hague, The Netherlands