

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **27 August 2026**

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 "Prosecution response to "Demande d'autorisation d'interjeter appel de la "Decision on the Prosecution's Second Request for the Extension of Contact Restrictions"(ICC-01/14-01/21-69)""", ICC-01/14-01/21-76-Conf, dated 17 May 2021

Source: Office of the Prosecutor

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Introduction

1. The Pre-Trial Chamber should dismiss the Defence's request for leave to appeal¹ the "Decision on the Prosecution's Second Request for the Extension of Contact Restrictions"² because it does not identify any appealable issue within the meaning of article 82(1)(d) of the Rome Statute.

2. The proposed issues either misread the Impugned Decision or are premised on a mere disagreement with it and therefore do not constitute appealable issues.³ They also do not meet the remaining article 82(1)(d) criteria.

I. Confidentiality

3. Under regulation 23*bis*(2) of the Regulations of the Court, the Prosecution files this response as confidential since it responds to a motion of the same classification. A public redacted version will be filed as soon as practicable.

II. Submissions

A. None of the proposed questions constitutes any appealable issue.

First Issue – alleging absence of motivation regarding Mr Said's links with rebel groups - misreads or merely disagrees with the Impugned Decision.

4. The Defence's first proposed issue –whether the Impugned Decision's is not motivated because it allegedly did not identify the facts supporting the links between Mr Said and the armed groups in the Central African Republic ("CAR") - is predicated on a misreading or misinterpretation of the Impugned Decision. In any event, it merely disagrees with the Single Judges reasonable assessment of the totality of the information in its proper context.

¹ ICC-01/14-01/21-75-Conf ("Request").

² ICC-01/14-01/21-69-Conf ("Impugned Decision").

³ ICC-01/04-168 OA3, para. 9; *see also* ICC-02/11-01/15-1051, paras. 5-6; ICC-01/05-01/08-2487-Red, para. 19; ICC-01/05-01/13-1278, para. 9 ; ICC-01/05-01/13-801, para. 12.

5. Mr Said wrongly asserts that the Single Judge did not explain in the body of the Decision, nor identify any evidence, in concluding that the basis for the contact restrictions against Mr Said - namely, his continuous involvement in or association with armed groups in the volatile situation in the CAR - had not changed since issuing the Second Restriction Decision.⁴

6. Yet, the Single Judge not only explicitly explained how he had reached the above conclusion – namely by carefully assessing both parties’ submissions⁵- but he also specifically identified and/or elucidated some of the factual elements in those submissions that he considered relevant in reaching that conclusion.⁶

7. The Prosecution’s submissions, specifically concerning Mr Said’s continuous involvement in or association with armed groups and the relevant supporting factual elements, are contained in a single paragraph.⁷ The Impugned Decision thus left no doubt as to what relevant parts of the Prosecution submissions it was referring to. In particular, concerning Mr Said’s continuous engagement with rebel groups in the CAR, the Prosecution’s submissions showed that Mr Said was not only a long time senior member of the *Front Populaire pour la Renaissance de la Centrafrique* (FPRC), but lately before his arrest, he had taken on the role with another rebel group, the *Coalition pour les Patriotes et le Changement* (“CPC”).⁸ More recent evidence since the second contact restriction decision was issued in March 2021 showed that the CPC continued to take active part in hostilities in the CAR, thereby creating very serious security risks to witnesses, victims and the Prosecution’s on-going investigations.⁹

⁴ *Contra* Request, para. 36.

⁵ Impugned Decision, para. 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 [could prejudice interest in regulation 101(2)].” (last part paraphrased).

⁶ Impugned Decision, paras. 25-28. As to what constitutes a reasoned decision see e.g., ICC-01/04-01/06-773 OA5, para. 20 (“The extent of the reasoning will depend on the circumstances of the case, but it is essential that it indicates with sufficient clarity the basis of the decision. Such reasoning will not necessarily require reciting each and every factor that was before the respective Chamber to be individually set out, but it must identify which facts it found to be relevant in coming to its conclusion”). See also ICC-01/04-01/06-774 OA6, para. 30; ICC-01/05-01/13-2276-Red A6 A7 A8 A9, para. 247; ICC-02/05-01/20-236, paras. 14, 42

⁷ ICC-01/14-01/21-61-Conf-Red, para. 4.

⁸ ICC-01/14-01/21-61-Conf-Red, para. 4.

⁹ ICC-01/14-01/21-61-Conf-Red, para. 4.

8. The Single Judge explicitly referred to and/or elucidated the relevance of Mr Said's continuous connection with the CPC in reaching the Impugned Decision. In rejecting Mr Said's submissions contesting his connection to CAR rebel groups, and his construction of the threshold of proof under regulation 101(2), the Single Judge held that "[e]ven assuming that the CPC has an indistinct structure and a fluctuating composition, this does not detract from the fact that it had expressed its support for Mr Said in relation to his transfer to the Court. This connection constitutes a concrete risk for witness interference if contact restrictions would be lifted."¹⁰ The Single Judge also specifically rejected Mr Said challenges to some allegations in the Warrant of Arrest that Mr Said claimed dated from 2015 or 2016. Noting that such allegations cannot be considered in isolation, the Single Judge underscored that "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."¹¹

9. Mr Said's further submissions impugning the alleged insufficiency of the new or latest material and elements in support of his continued connection with the CAR rebel group,¹² merely disagree with the Impugned Decision's reasonable assessment. His submissions are irrelevant to and/or inadequate bases for impugning the sufficiency of the Impugned Decision's motivation.

10. Assessing the sufficiency of these factors as posing such a risk fell within the Chamber's discretion to freely evaluate the relevant information or evidence. The Defence, by seeking to impugn the Chamber's factual evaluations, or by advancing alternative interpretations of the information or evidence, merely expresses factual disagreements with the conclusions reached by the Chamber.¹³ The Defence's both approaches are, as underscored by many Chambers at the Court, not sufficient bases for granting leave to appeal under article 82(1)(d) of the Statute.¹⁴

¹⁰ Impugned Decision, para. 28.

¹¹ Impugned Decision, para. 28.

¹² Request, paras. 37-45.

¹³ Request, paras. 37-45.

¹⁴ See e.g., ICC-02/05-02/09-267, paras. 4, 11-12 ("The issue raised by the Prosecution concerns "the application of incorrect methods and criteria for evaluating evidence" at the confirmation of the charges stage (...). As

Second Issue – concerning the Decision’s alleged errors in crediting the risk posed by Defence access to confidential information due to Prosecution disclosures - is predicated on a misreading of or a mere disagreement with the Impugned Decision.

11. In his second proposed question, Mr Said contends that the Impugned Decision variously erred – including by allegedly not providing detailed explanation - in crediting the risk of his access to confidential information arising from the Prosecution’s disclosures.¹⁵

12. *First*, Mr Said’s claim that the Prosecutor had not provided concrete evidence concerning which witnesses were the subject of special risk,¹⁶ not only merely disagrees with whether this was necessarily required given the low threshold of proof under regulation 101(2), but also misreads the totality of the context in which the Impugned Decision considered this factor. Mr Said ignores that this factor was merely an additional consideration in the Impugned Decision’s assessment of the risks posed to witnesses should contact restrictions against Mr Said be lifted.¹⁷

13. Mr Said further ignores that in line with the Prosecution’s submissions, the Decision was considering the potential risk to witnesses arising from disclosure to Mr Said of witness identities against the backdrop of the infancy of the Prosecution’s process of assessing and implementing witness protective measures.¹⁸ In any event, Mr Said merely disagrees with the Impugned Decision’s reasonable assessment of

enunciated, the Prosecution’s argument appears to be that, in addition to different standards of proof applicable to various stages of the proceedings before the Court, there should also be different standards of assessment of evidence. The Chamber is (...) of the view that the first issue is a mere assertion that the Chamber should have assessed the evidence before it differently. Such assessment however rests within the discretion vested equally, by the Statute and the Rules, on all Chambers of the Court to freely assess the evidence submitted to them. Therefore, the Chamber finds that the argument raised by the Prosecution under the “first issue” does not constitute an issue within the meaning of article 82(1)(d) of the Statute but amounts to a mere disagreement with regard to the Chamber’s exercise of its discretionary powers to freely assess the evidence submitted to it”); *see also* ICC-01/05-01/13-801, paras. 9-11 (underscoring, among others: “[A]s repeatedly clarified by the relevant case law, it takes more than the highlighting of the existence of a possible alternative interpretation of facts for an “issue” to be suitable to trigger the leave to lodge an interlocutory appeal”).

¹⁵ Request, paras. 46-50.

¹⁶ Request, paras. 47-48.

¹⁷ Impugned Decision, para. 27 (the Decision ‘further’ noting this factor, in addition to Mr Said’s continuous connection to CAR rebel groups).

¹⁸ Impugned Decision, para. 27 (“The Single Judge notes that the Prosecution is ‘still in the process of assessing and implementing necessary proactive 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”).

potential risks to witnesses if Mr Said was permitted access to witness identities at this early stage of the Prosecution's assessment and implementation of protective measures. Given all these circumstances, Mr Said's claim that the Impugned Decision should have considered and provided further motivation concerning the Prosecution's alleged failure to provide details of which witnesses were exposed to risk,¹⁹ is a mere disagreement with the Decision's reasonable assessment of this factor.

14. *Second*, Mr Said's claim that the Impugned Decision considered that he now has access to sensitive information, yet this was allegedly not argued by the Prosecution,²⁰ misunderstands or merely disagrees with the Impugned Decision's reasonable assessment. Since the Prosecution's disclosure to the Defence normally covers witness identifying information, Mr Said merely disagrees that such information is necessarily also sensitive.

Third Issue – concerning alleged irrelevance of an incident in which [REDACTED] – misreads or merely disagrees with the Decision.

15. Mr Said alleges an error of law based on the Impugned Decision's consideration of an incident in which [REDACTED], because, in his view, no link was established with the need to impose restrictions on Mr Said.²¹

16. *First*, Mr Said ignores that this factor was merely an additional consideration in the Impugned Decision's evaluation of the risks posed to witnesses should contact restrictions against Mr Said be lifted.²²

17. *Second*, and in any event, Mr Said merely disagrees with the Decision's reasonable evaluation that in assessing the existence of salient risks that may justify imposing contact restrictions under regulation 101(2), account may be taken of all factors that may impinge on or contribute to the general volatile security situation in

¹⁹ Request, paras. 47-48.

²⁰ Request, paras. 49-50.

²¹ Request, para. 52.

²² Impugned Decision, para. 26 (the Decision 'furthermore' noting this factor, in addition to Mr Said's continuous connection to CAR rebel groups).

which witnesses and victims find themselves, regardless of whether every such factor necessarily engages the accused or suspected person's conduct. Such factual assessments generally fall within the discretion of a Pre-Trial or Trial Judge (rather than the Appeals Chamber). Impugning their reasonableness is generally an insufficient basis for granting leave to appeal under article 82(1)(d).²³ The third proposed issue should thus be dismissed.

Fourth Issue – alleged errors regarding the threshold of proof – are predicated on a misreading of the Impugned Decision or a mere disagreement with it.

18. Mr Said alleges an error of law regarding the Decision's alleged approach to the standard of proof under regulation 101(2).²⁴ His contentions misread the Decision, or merely disagree with the Decision's reasonableness regarding the facts that were considered in reaching the Decision.

19. Mr Said concedes that regulation 101(2) "explicitly requires the Prosecutor to demonstrate that unrestricted contacts of a detained person *may cause* a risk to investigations and/or witnesses."²⁵ This is generally consistent with how the Impugned Decision construed the standard of proof in regulation 101(2).²⁶ Mr Said's contentions challenging what sort of evidence meets this threshold – and indeed whether the evidence considered in this case met the standard²⁷ – merely disagrees with the Impugned Decision's reasonable assessment of matters that normally fall within the discretion of the Pre-Trial or Trial Chamber. Such challenge, as underscored by many Chambers at the Court, is not sufficient basis for granting leave to appeal under article 82(1)(d) of the Statute.²⁸

²³ See e.g., ICC-02/05-02/09-267, paras. 4, 11-12; ICC-01/05-01/13-801, paras. 9-11.

²⁴ Request, paras. 54-57.

²⁵ Request, para. 55. Emphasis added.

²⁶ Impugned Decision, para. 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)(c) of the Regulations of the Court, namely '*reasonable grounds to believe* that such conduct: [...] (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' (...), and recalls that it has already been determined that, as result of the aforementioned factors, these risks could materialise (...)."

²⁷ Request, paras. 55-57.

²⁸ See e.g., ICC-02/05-02/09-267, paras. 4, 11-12.

20. Nor is Mr Said's generalised claim that the moment a party alleges an error of law, a Chamber is under a duty to grant leave to appeal,²⁹ find support in the Court's case-law. To the contrary, it is settled jurisprudence that article 82(1)(d) does not enshrine a right of appeal, but only grants a restrictive remedy.³⁰ Indeed, the potential impact a matter may have on other cases or the Court's jurisprudence is not sufficient basis for granting leave to appeal.³¹

B. The proposed issues do not meet the remaining article 82(1)(d) criteria.

21. Even assuming, *arguendo*, that the four proposed issues are appealable, they should not be certified for appeal because the Defence does not show that they would significantly affect the fair and expeditious conduct of the proceedings, or the outcome of the trial, and that their immediate resolution by the Appeals Chamber may materially advance the proceedings.

22. To the contrary, concerning all four issues, Mr Said sweepingly suggests, without supporting jurisprudence, that "as soon as a decision affects the fundamental rights of an accused person, it must be regarded as necessarily affecting the fair conduct of the proceedings."³²

23. Yet, as is clear from article 82(1)(d) and as elucidated by the case-law of the Court, to grant leave to appeal in any case, a Chamber must be satisfied of the "[e]xistence of a *significant* impact of the issue at stake on the fairness and expeditiousness of the proceedings. In this connection, the Chamber wishes to recall that the first limb of the first requirement of article 82, paragraph 1(d) is two-fold and that, accordingly, leave to appeal can be granted only if the issue on which appeal is sought would *significantly* affect the proceedings both in terms of fairness and in terms of expeditiousness (...)." ³³ The Defence Request's unsubstantiated claims of unfairness or prejudice to the expeditious conduct of the proceedings cannot meet this standard.

²⁹ Request, para. 57.

³⁰ ICC-01/04-168 OA3, 13 July 2006, para. 20.

³¹ ICC-01/05-01/08-980, para. 16.

³² Request, para. 58.

³³ ICC-02/04-01/15-64, para. 23.

24. In any event, the Impugned Decision cannot be shown to negatively impact fairness or expeditiousness. To the contrary, it overall extends the restrictions imposed in the Second Contacts Restrictions Decision,³⁴ which did not impose open-ended restrictions on communication both in terms of scope and duration. Although restrictions to non-privileged discussions cover all substantive aspects of the case, Mr Said is not prevented from expressing his general feelings about the present proceedings or discussing other aspects of his life at the Detention Centre.³⁵ Mr Said may communicate both with members of his family and ‘other persons’ under the same conditions identified in the First Restriction Decision.³⁶ The Impugn Decision now extends Mr Said non-privileged telephone calls from two to three hours per week on a maximum of two days per week.³⁷ Moreover, the contact restriction against Mr Said are imposed for a limited duration. They are to last for two months until 5 July 2021.³⁸ But, due to what the Single Judge considers the restrictions’ “potentially increasing impact on the psychological well-being of Mr Said as the proceedings preceding the confirmation of charges hearing progress,”³⁹ the Single Judge further ruled that “the Prosecution will, if it intends to have the restrictions extended, need to additionally substantiate its request in accordance with the stage of the proceedings.”⁴⁰

25. Finally, although Mr Said’s Request fails to justify immediate appellate intervention solely because it overall misreads the Impugned Decision and seeks to challenge factual matters that fall within the Single Judge’s discretion, the Request’s failure is also aggravated by the fact that Mr Said has already filed an appeal challenging his contact restrictions on related grounds.⁴¹ This appeal is still pending before the Appeals Chamber. A combination of all these means not only that

³⁴ ICC-01/14-01/21-31-Conf.

³⁵ ICC-01/14-01/21-31-Conf, para. 38.

³⁶ ICC-01/14-01/21-31-Conf, para. 34.

³⁷ Impugned Decision, para. 33.

³⁸ Impugned Decision, para. 30.

³⁹ Impugned Decision, para. 31.

⁴⁰ Impugned Decision, para. 31. See also para. 32.

⁴¹ ICC-01/14-01/21-59-Conf.

immediate appellate intervention would delay (rather materially advance) the proceedings, but it would also be contrary to judicial economy.

Relief Requested

26. Based on the above, the Chamber should deny the Defence Request in its entirety.

A handwritten signature in black ink, appearing to read 'Mandiaye Niang', is written over a horizontal line.

Mame Mandiaye Niang, Deputy Prosecutor

Dated this 27th day of August 2026

At The Hague, The Netherlands