

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: 28 March 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

THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI

PUBLIC

With Confidential *EX PARTE* Annex only available to the Registry

Public Redacted Version of the “Registry Report on the Implementation of the Restrictions on Contact Ordered by Trial Chamber VI”, filed on 24 January 2022, ICC-01/14-01/21-232-Conf.

Source: Registry

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

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I. Introduction

1. Following the email instruction (“Instruction”)¹ by the Trial Chamber VI of the International Criminal Court (“Chamber” and “Court”, respectively) issued on 14 January 2022 in the case of *The Prosecutor v. Mahamat Said Abdel Kani* (“Mr Said”), the Registry hereby submits its report on the implementation of the restrictions on contact currently in place for Mr Said.

II. Procedural history

2. Pursuant to a series of decisions and Registry reports,² the Single Judge at pre-trial stage (“Single Judge”) has ordered the restrictions on Mr Said’s contacts to be: (1) actively monitored non-privileged telephone calls with authorized family members and other persons for four hours for a maximum two times a week;³ (2) actively monitored non-privileged visits with “a limited number of individuals, such as family members”;⁴ (3) written correspondence only with authorized family members and other persons;⁵ (4) non-privileged communications are limited to authorized individuals “provided that their identities and contact details have been thoroughly verified with the support of the Victims and Witnesses Unit” (“VWU”);⁶ (5) non-privileged communications

¹ Email from the Trial Chamber VI to the Registry (“Instruction”) on 14 January 2022 at 13:30.

² Pre-Trial Chamber II, “Confidential Redacted Version of ‘Decision on the ‘Prosecution’s Request for Contact Restrictions concerning Mahamat Said Abdel Kani in Pre-trial Detention’” (“3 February Decision”), 3 February 2021, ICC-01/14-01/21-9-Conf-Red; Registry, “Confidential Redacted Version of ‘Registry Report on the Implementation of the Restrictions on Contact Ordered by the Single Judge’”, filed on 24 February.”, 24 February 2021, ICC-01/14-01/21-23-Conf-Red; Pre-Trial Chamber II, “Decision on the ‘Prosecution’s Request for Extension of Contact Restrictions’” (“5 March Decision”), 5 March 2021, ICC-01/14-01/21-31-Conf; Registry, “Second Registry Report on the Implementation of the Restrictions on Contact Ordered by the Single Judge”, 21 April 2021, ICC-01/14-01/21-57-Conf; ICC-01/14-01/21-107-Conf ; Pre-Trial Chamber II, “Decision on the ‘Prosecution’s Second Request for the Extension of Contact Restrictions’” (“5 May Decision”), 5 May 2021, ICC-01/14-01/21-69-Conf; Registry, “Third Registry Report on the Implementation of the Restrictions on Contact Ordered by the Single Judge”, 23 June 2021, ICC-01/14-01/21-107-Conf; Pre-Trial Chamber II, “Decision on the Prosecution’s third request for the extension of contact restrictions” (“5 July 2021 Decision”), 5 July 2021, ICC-01/14-01/21-116-Conf; Registry, “Fourth Registry Report on the Implementation of the Restrictions on Contact Ordered by the Single Judge”, 20 August 2020, ICC-01/14-01/21-147-Conf.

³ 5 July 2021 Decision, para. 35.

⁴ 5 July 2021 Decision, para 36.

⁵ 5 March 2021, para. 34.

⁶ 5 March 2021, para. 35.

are limited to the French and Sango language;⁷ and (6) the prohibition of using obscure or coded language, or discussing the substantive aspects of his case with his non-privileged contacts.⁸

III. Classification

3. In accordance with regulation 23 *bis*(1) of the Regulations of the Court (“RoC”), the present report is classified as confidential, as: (a) it refers to decisions of the same level of classification, and (b) provides confidential information on internal procedures to the Registry. The annex to the present report is classified confidential *ex parte* only available to the Registry as it refers to information with the same level of information and to the [REDACTED].

IV. Applicable law

4. For the purpose of the present report, the Registry has considered, *inter alia*, article 43(6) of the Rome Statute, regulations 23 *bis*(1), 90, 99(1)(i), 100 and 101 of the RoC, and regulations 173, 174, 175, 177, 179, 180, 183, 184, 185 and 189 of the Regulations of the Registry (“RoR”).

V. Submissions

5. The Registry provides its report regarding the following, as instructed: A) “the implementation of the contact restrictions in relation to Mr Said Abdel Kani, including the possibility of further increasing active monitoring of telephone and other contacts”; B) [REDACTED]; and C) “the most (cost-)effective measures that could mitigate any threat posed by Mr Said Abdel Kani”.⁹

A) On the implementation of the contact restrictions and on the possibility to increase the active monitoring of communications

⁷ 3 February 2021 Decision, para. 22, 24, 25.

⁸ 5 May 2021 Decision, paras. 29-30, 33.

⁹ See Instruction.

(i) *Implementation of restrictions on contact measures*

6. The Registry informs the Chamber that it has continued to implement the restrictions on contacts for Mr Said ordered by Pre-Trial Chamber II.

In relation to non-privileged telephone calls

7. Pursuant to the restrictions on contact ordered by the Single Judge as above, Mr Said is allowed to make non-privileged telephone calls twice a week for a total of four hours, to authorized individuals whose identities and contact information are thoroughly verified by the Registry, including with the support of the VWU.¹⁰ Mr Said is offered two time periods of telephone calls each week: a 105-minutes time period and a 150-minutes time period for his non-privileged telephone calls, all of which are actively monitored.¹¹ Since the last Registry's report on the implementation of the restrictions on contacts for Mr Said,¹² the Registry has no incidents to report.
8. Pursuant to regulation 90(2) of the RoC, the Acting Chief Custody Officer ("Acting CCO") in the Detention Section ("DS") is delegated with the task of implementing the active monitoring measures within the Registry. The Acting CCO considers that Mr Said is clear in his speech and also appears to have a solid understanding and respect for the restrictions measures, and does not hesitate to inform his interlocutors of the restrictions.

An assessment of the feasibility to increase the active monitoring

9. [REDACTED].
10. [REDACTED].

¹⁰ 5 May 2021 Decision, para. 33; 5 July Decision, para 35.

¹¹ [REDACTED].

¹² Registry, "Fourth Registry Report on the Implementation of the Restrictions on Contact Ordered by the Single Judge", 20 August 2021, ICC-01/14-01/21-147-Conf, para. 7.

11. At present, Mr Said [REDACTED]. As there are no hearings in the present case at this time, the Registry has the capacity to increase the calling time for Mr Said by [REDACTED] per week, amounting to a total of [REDACTED] of calling time per week, and by the end of February, by [REDACTED] per week, amounting to a total of [REDACTED] hours of calling time a week.
12. This may change when the trial hearings start. Should the Chamber continue the current active monitoring regime, the Registry informs the Chamber of the following two anticipated challenges the DS may face.
13. First, typical full-day of trial hearings are scheduled to end at 16:00; [REDACTED] Detention Centre ("DC"), [REDACTED]. Therefore, in the event of full-day hearings, the Registry is able to facilitate a single session of maximum [REDACTED] of actively monitored phone calls per day. [REDACTED].
14. Second, [REDACTED]. Should the Chamber continue the current monitoring regime, the Registry is able to accommodate only [REDACTED] such sessions of [REDACTED] per week for Mr Said. In light of this, in order to provide flexibility in the scheduling of [REDACTED] resources, the Chamber may wish to consider that the Registry conducts *post facto* monitored telephone calls during weeks of trial hearings, as further explained below. This would be *in lieu of* [REDACTED] at the time of Mr Said's calls.

(ii) *In relation to in-person non-privileged visits and incoming and outgoing mails*

15. Pursuant to the Single Judge's restrictions on contact, Mr Said is authorized to receive non-privileged visits and send or receive non-privileged letters from individuals whose identity and contact details have been thoroughly verified

by the Registry.¹³ The Registry has no incidents to report regarding non-privileged visits and written correspondence.

B) [REDACTED]

16. [REDACTED].

17. [REDACTED].

18. [REDACTED].

19. [REDACTED].

C) *Registry's comments or suggestions regarding the most (cost-)effective measures that could mitigate any threat posed by Mr Said*

20. The Chamber has requested the Registry to provide comments or suggestions on specific measures to minimise the impact of restrictions on Mr Said and on the Registry.

21. Should the Chamber decide to maintain the current regime of active monitoring of all non-privileged communications of Mr Said, and in the event that the monitoring conducted by DS reveals potential concerns in relation to witness security, the [REDACTED], on a case by case basis, an additional *post facto* analysis of the recordings of the conversations, with the assistance of [REDACTED].

22. If the Chamber was to decide that the [REDACTED] should perform such an analysis, the Registry wishes to specify that the recordings of non-privileged telephone calls of a detained persons form part of the confidential detention record of the detained person. Those recordings contain confidential private and personal information of both the detained persons and his non-privileged contacts. Regulation 92 of the RoC states that the detention record of detained

¹³ 5 July 2021 Decision, para. 36; 5 March 2021 Decision, para. 34.

persons shall be confidential and that the views of the detained persons be sought prior to access, save in exceptional circumstances.

23. With this in mind, should the Chamber maintain the current active monitoring regime of all non-privileged communications of Mr Said, the Registry makes the two following proposals.

24. First, in the context of active monitoring 'at random', Mr Said could call his contacts on a designated time and date but the Registry would review only some telephone calls with any or some contacts only. In implementing such an order, Mr Said would not be informed of the telephone conversations which are actively monitored.

25. Second, in the context of *post facto* monitoring, all of Mr Said's non-privileged telephone calls would be recorded; Mr Said could call the individuals at any time and the conversations would be listened to within the next couple of working days (i.e. *post facto*) by the [REDACTED].

Assessment of the feasibility of active monitoring 'at random'

26. The active monitoring 'at random' of non-privileged telephone calls as described above, has been implemented in another case.¹⁴ . This possibility allows the Registry to minimise the quantity of telephone calls to listen to and review. At the same time, this procedure entails a loss of information which could make the conversations more difficult to understand, put in context and to report on.

Assessment of the feasibility of post facto active monitoring by [REDACTED]

27. As stated above, this possibility could allow Mr Said to make telephone calls outside the current scheduled time periods, especially during full weeks of trial

¹⁴ Pre-Trial Chamber II, "Decision Pursuant to Regulation 101 of the Regulations of the Court", 28 January 2021, ICC-01/14-01/18-241-Red, para. 27.

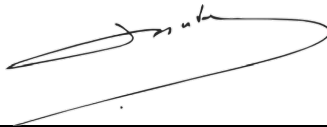
hearings. This measure is the most cost-effective as it does not require the [REDACTED] during each actively monitored telephone call.

28. Should the Registry be ordered to *post facto* monitor Mr Said's non-privileged telephone calls, the Registry requests that a weekly allotment of 240 minutes be maintained during weeks of hearings, in order to enable timely interpretation and that the interpretation workload remains manageable.

29. This measure is the most effective when 100% of the telephone calls are reviewed. Indeed, this allows the [REDACTED] to better follow the flow of a conversation and the information exchanged during those conversations. As such, the amount of telephone calls to listen to and review would remain the same as for the regular active monitoring of all non-privileged telephone calls of a detained person and as ordered by Pre-Trial Chamber II.

VI. Conclusion

30. For the reasons explained above, as the most cost-effective measure, and to help mitigate any threat Mr Said poses to witnesses, the Chamber may wish to consider maintaining the current active monitoring of Mr Said's non-privileged communications, with the possibility for the Registry to conduct a *post facto* monitoring of his non-privileged telephone calls during weeks of trial hearings.



Marc Dubuisson, Director Division of Judicial Services
on behalf of Peter Lewis, Registrar

Dated this 28 March 2022

At The Hague, the Netherlands