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Date: **5 April 2022**

APPEALS CHAMBER

Before: Judge Gocha Lordkipanidze, Presiding
Judge Piotr Hofmański
Judge Luz del Carmen Ibáñez Carranza
Judge Marc Perrin de Brichambaut
Judge Solomy Balungi Bossa

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF *PROSECUTOR* v.
*MAHAMAT SAID ABDEL KANI***

Public

Public Redacted Version of « Prosecution Response to the “Mémoire de la Défense relatif à l’appel interjeté à l’encontre de la « Decision on the Defence Application for Interim Release of Mahamat Said Abdel Kani and Contact Restrictions » (ICC-01/14-01/21-247-Conf) de la Chambre de première instance VI décidant du maintien en détention de Monsieur Said et du maintien des mesures de restrictions à ses communications” (ICC-02/05-01/20-265-Conf) », 31 March 2022, ICC-01/14-01/21-268-Conf

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

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INTRODUCTION

1. On 3 March 2022, Trial Chamber VI rejected Mr Said’s request to grant him interim release under article 60(2) of the Rome Statute, ordered his continued detention and modified the restrictions on his contacts while in detention.¹ The Chamber found that the criteria in article 58(1)(a), 58(1)(b)(i) and 58(1)(b)(ii) were met—namely: that there are reasonable grounds to believe that Mr Said committed crimes within the jurisdiction of the Court;² that his arrest and continued detention appears necessary to ensure his appearance at trial;³ and that his arrest and continue detention appears necessary to ensure that he does not obstruct or endanger the investigation or court proceedings.⁴ The Chamber also considered it necessary to maintain contact restrictions to protect the integrity of the proceedings, but modified them to ensure that the restrictions did not infringe upon his private and family life in a disproportionate manner.⁵ The Chamber’s analysis was based on factors concretely arising from the evidence and developments in this case.

2. The Decision is reasonable and correct. Mr Said’s five grounds of appeal which challenge aspects of the Chamber’s analysis under article 58(1)(b)(i) and (ii)⁶ fail to establish any legal or factual error. Rather, the Defence mischaracterises the Chamber’s reasoning by taking certain findings in isolation and out of context, advances an incorrect standard for the article 58(1)(b) assessment without showing any error and often merely disagrees with the Chamber’s assessment without showing any error. The Appeal against the decision to maintain Mr Said in detention should be dismissed. Moreover, the Defence impermissibly attempts to appeal the Chamber’s decision maintaining Mr Said’s contact restrictions as a direct appeal under article 82(1)(b), but given this was not “a decision granting or denying release”, the Defence should have sought leave to appeal that decision under article 82(1)(d), which it did not do. This aspect of the Appeal should be dismissed *in limine*.

CONFIDENTIALITY

3. This response is classified as “confidential” pursuant to regulation 23bis(2) of the Regulations of the Court (“Regulations”) as it responds to a filing of the same classification

¹ ICC-01/14-01/21-247-Conf (“[Decision](#)”) (public redacted version: ICC-01/14-01/21-247-Red).

² [Decision](#), paras. 25, 39.

³ [Decision](#), paras. 26-30, 39.

⁴ [Decision](#), paras. 31-36, 39.

⁵ [Decision](#), para. 45.

⁶ ICC-01/14-01/21-265-Conf (“[Appeal](#)”).

and refers to other documents which are currently subject to the same classification. The Prosecution will file a public redacted version of the document in due course.

SUBMISSIONS

A. Ground 1: The Chamber's analysis was grounded in the evidence and concrete circumstances of the case

i. The Trial Chamber did not reverse the burden of proof

4. The Defence argues that the Chamber's decision to maintain Mr Said in detention was not based on concrete evidence, but rather on theoretical, hypothetical or abstract risks that he may abscond or that he may obstruct or endanger the investigation or court proceedings. The Defence argues that this effectively reversed the burden of proof by requiring the Defence to prove the absence of such risks, amounting to a legal error.⁷ The Defence's arguments should be rejected. They take certain findings of the Chamber in isolation and out of context.⁸ Moreover, the Defence mischaracterises the Chamber's findings and advances an incorrect standard for the assessment of the factors under article 58(1)(b) of the Statute.

5. *First*, as the Appeals Chamber has consistently held, "[w]hat may justify arrest (and, [...] continued detention) under article 58(1)(b) of the Statute is that it must "appear" to be necessary. The question revolves around the *possibility, not the inevitability*, of a future occurrence".⁹ Consistent with this standard, chambers have held that: (i) any determination under article 58(1)(b)(i) of whether or not a person is likely to abscond will necessarily involve an element of *prediction*;¹⁰ and (ii) a decision to detain a person under article 58(1)(b)(ii) does not require concrete indications that a person had made past attempts to influence witnesses or that he has specific plans to do so in the future.¹¹ Contrary to the

⁷ [Appeal](#), paras. 28-35.

⁸ [Appeal](#), paras. 29-32 (citing the Chamber's findings that Said can still count on the support of former comrades; that there was nothing to stop the FPRC to interfere with the proceedings given the opportunity; and that Said may have a strong motive to influence Prosecution witnesses before the start of trial).

⁹ ICC-01/04-01/07-572 ("[Ngudjolo 9 June 2008 Interim Release AD](#)"), para. 21. *See also* ICC-02/05-01/20-177 ("[Abd-Al-Rahman 8 October 2020 Interim Release AD](#)"), para. 33; ICC-01/05-01/13-558 ("[Bemba et al. 11 July 2014 Kilolo Interim Release AD](#)"), paras. 107, 117; ICC-01/05-01/13-560 ("[Bemba et al. 11 July 2014 Mangenda Interim Release AD](#)"), para. 123; ICC-01/04-01/10-283 ("[Mbarushimana 14 July 2011 Interim Release AD](#)"), para. 60; ICC-01/05-01/08-323 ("[Bemba 16 December 2008 Interim Release AD](#)"), para. 55. (Emphasis added.)

¹⁰ ICC-01/04-01/06-824 ("[Lubanga 13 February 2007 Interim Release AD](#)"), para. 137. *Contra* [Appeal](#), paras. 30-33.

¹¹ [Decision](#), para. 33; [Mbarushimana 14 July 2011 Interim Release AD](#), para. 60. *Contra* [Appeal](#), paras. 31, 33-35.

Defence's claim, this assessment does not create a presumption of continued detention, nor does it reverse the burden of proof onto the detained person.¹² Rather, there will be a range of factors that chambers may consider in assessing article 58(1)(b),¹³ and "[i]t is precisely the task of the [chamber], on the basis of the available evidence, to weigh such evidence and, on that basis, to make a prediction as to the likelihood of future events".¹⁴

6. In this context, the Chamber did not err in finding that there was a risk that Mr Said may abscond if released and that he may obstruct or endanger the proceedings, notwithstanding that there was no evidence that he, or his network on his behalf, had attempted to do so in the past.¹⁵ Its assessment was appropriately based on a range of factors, analysed in their totality.¹⁶ For example, in its assessment under article 58(1)(b)(i),¹⁷ the Chamber reasonably considered, *inter alia*: Mr Said's knowledge of the risk of incurring a lengthy sentence;¹⁸ that charges against him had been confirmed;¹⁹ that there was no indication he had fallen out with the leadership or members of the *Front Populaire pour la Renaissance de la Centrafrique* ("FPRC") and therefore he could still count on their support;²⁰ that while there was no evidence that the FPRC had done anything to interfere with the proceedings, this did not mean it would not do so given the opportunity;²¹ and the current situation of insecurity and instability in CAR which Mr Said could use to his advantage to evade the CAR authorities if he wanted to, once released.²²

7. In its assessment under article 58(1)(b)(ii),²³ the Chamber also took into consideration, *inter alia*: the dire security situation for witnesses in the CAR and that a number of Prosecution witnesses have already faced security threats, including specific

¹² [Appeal](#), paras. 34-35.

¹³ See e.g. ICC-02/11-01/12-2-Red ("[Simone Gbagbo Article 58 Decision](#)"), para. 42 (citing, for example, the person's past and present political position, their international contacts, financial and professional background, availability of the necessary network and financial resources, and the length of the likely sentence if convicted); ICC-01/05-01/08-73 ("[Bemba 20 August 2009 Interim Release Decision](#)"), paras. 55-56.

¹⁴ [Mbarushimana 14 July 2011 Interim Release AD](#), para. 60; see also para. 52.

¹⁵ *Contra* [Appeal](#), paras. 31-33.

¹⁶ [Abd-Al-Rahman 8 October 2020 Interim Release AD](#), para. 35 (recalling that "[t]he apparent necessity of continued detention to ensure the detainee's appearance at trial does not necessarily have to be established on the basis of one factor taken in isolation. It may also be established on the basis of an analysis of all relevant factors taken together", and finding that "[b]y relying on various factors holistically [...] the Pre-Trial Chamber's analysis was fully in line with this approach"); [Bemba 16 December 2008 Interim Release AD](#), para. 55.

¹⁷ [Decision](#), paras. 26-30.

¹⁸ [Decision](#), para. 26.

¹⁹ [Decision](#), para. 26.

²⁰ [Decision](#), para. 27.

²¹ [Decision](#), para. 28.

²² [Decision](#), para. 29.

²³ [Decision](#), paras. 31-36.

threats made to two Prosecution witnesses in the case in April and May 2021 involving an individual purporting to be Mr Said's lawyer;²⁴ the assessment of [REDACTED];²⁵ that Mr Said may have a strong motive to influence Prosecution witnesses before the start of trial; and that he is now in possession of a large amount of confidential information, including the identities of a large number of witnesses given the advanced stage of disclosure.²⁶ The Chamber's assessment of these factors in their totality led it to the reasonable conclusion that the conditions under article 58(1)(b)(i) and (ii) were met, justifying Mr Said's continued detention.²⁷ The Defence fails to address the Chamber's holistic analysis of these factors.

8. *Second*, in claiming that the Chamber's findings were based on theoretical, abstract or hypothetical risks not grounded in evidence,²⁸ the Defence highlights three specific findings, none of which support its argument. The Defence first challenges the Chamber's finding in paragraph 27 of the Decision that there was no indication that Mr Said had not broken ranks or fallen out with the FPRC, and he could therefore still count on the support of former comrades.²⁹ The Chamber's conclusion was reasonable in light of the evidence submitted by the Prosecution—including media articles, an FPRC press communiqué, Facebook pages, Prosecution investigation reports, an NGO report, and a witness interview—which describe Mr Said as having a senior role in the FPRC, including serving as a General of the FPRC in Bria, prior to his arrest and surrender.³⁰ While the Chamber did not expressly cite all of these sources when stating its finding, it is clear in the Chamber's reasoning that its finding was based on *all* the evidence before it which, taken as a whole, reasonably supported its finding. Specifically, the Chamber noted the submissions of the Parties and participants,³¹ stated that it had "carefully considered all arguments",³² and cited two sources provided by the Prosecution (an NGO report dated November 2014 and a declaration of the *Coalition des Patriotes pour le Changement* ("CPC") dated December 2020) only by way of example to

²⁴ [Decision](#), paras. 32-33, citing CAR-OTP-9780, at 9784 and ICC-01/14-01/21-61-Conf-Exp-AnxA.

²⁵ [Decision](#), para. 33, citing ICC-01/14-01/21-232-Conf-Exp-Anx. The Prosecution does not have access to this document as it was filed confidential *ex parte* available only to the Registry.

²⁶ [Decision](#), para. 35.

²⁷ [Decision](#), paras. 26-30 (re article 58(1)(b)(i)), 31-36 (re article 58(1)(b)(ii)).

²⁸ *Contra* [Appeal](#), paras. 28, 30, 33.

²⁹ [Appeal](#), paras. 29-30, citing [Decision](#), para. 27.

³⁰ ICC-01/14-01/21-236-Conf (public redacted version: ICC-01/14-01/21-236-Red) ("[Prosecution Additional Submissions on Detention](#)"), para. 19. *See also* paras. 20-22.

³¹ [Decision](#), paras. 12-16 (noting the Registry's report on the implementation of contact restrictions, and the Parties' oral and written submissions on interim release and contact restrictions).

³² [Decision](#), para. 27 ("The Chamber has carefully considered all arguments and concludes that although the Prosecution has not advanced any evidence showing that Mr Said has continued to enjoy a leadership role in any organisation since his arrest and surrender, there is also no indication that Mr Said has broken ranks with the FPRC or has fallen out with its current leadership, former colleagues or subordinates").

support its finding.³³ While citations to other evidence may have further demonstrated the support underlying the Chamber's conclusions, the lack of these references does not vitiate the Chamber's finding.

9. The Defence next challenges the Chamber's finding in paragraph 28 of the Decision that while there was no evidence to indicate that the FPRC has done anything to interfere with the current proceedings, this does not show that either the organisation or individual members in their private capacity would not do so if given the opportunity.³⁴ This was not an abstract or hypothetical finding,³⁵ but instead it was a reasonable assessment of risk in the context of all the evidence before the Chamber—which the Defence ignores—which included a [REDACTED].³⁶ Indeed as the Appeals Chamber has previously found, the existence of a group or party that supports the detained person is relevant to the determination of whether continued detention appears necessary under article 58(1)(b) because it is reasonable to assume that a close support network may assist in obstructing or endangering the investigation or court proceedings.³⁷

10. Finally, the Defence challenges the Chamber's finding in paragraphs 32 to 35 of the Decision that while there was no evidence of a link between Mr Said and the alleged security threats faced by Prosecution witnesses in the CAR, Mr Said may nonetheless have a strong motive to influence Prosecution witnesses before the start of the trial.³⁸ The Defence ignores relevant aspects of the Chamber's reasoning. The Chamber noted *inter alia* that: (i) Prosecution witnesses had already faced security threats in the CAR,³⁹ including specific threats made to two witnesses in April and May 2021 involving an individual purporting to be Mr Said's lawyer;⁴⁰ (ii) these allegations demonstrated the fragility of the security situation for ICC witnesses residing in the CAR;⁴¹ (iii) the existing security situation in the CAR was dire; and (iv) [REDACTED].⁴² Thus the Chamber concluded, "[b]ased on all the information available to it, the Chamber has come to the conclusion that there would be little to prevent Mr Said from harming or intimidating witnesses in this case if he were to be

³³ [Decision](#), para. 27 (fn. 51).

³⁴ [Appeal](#), para. 31, citing [Decision](#), para. 28.

³⁵ *Contra* [Appeal](#), para. 33.

³⁶ [Decision](#), para. 33, citing ICC-01/14-01/21-232-Conf-Exp-Anx.

³⁷ ICC-02/11-01/11-278-Red ("Gbagbo 26 October 2012 Interim Release AD"), para. 63.

³⁸ [Appeal](#), para. 32, citing [Decision](#), paras. 32-35.

³⁹ [Decision](#), para. 32 and fn. 53.

⁴⁰ [Decision](#), para. 32, citing CAR-OTP-9780, at 9784 and ICC-01/14-01/21-61-Conf-Exp-AnxA.

⁴¹ [Decision](#), paras. 32-33.

⁴² [Decision](#), para. 33, citing ICC-01/04-01/21-232-Conf-Exp-Anx.

released to the CAR or to cause others to do so”.⁴³ The Chamber’s finding was reasonable and correct in light of all the evidence before it. As the Chamber noted, its analysis necessarily involved weighing the overall potential risk of future obstruction of justice if the person is released, and assessing how easy it would be for them to interfere with witnesses or otherwise obstruct justice.⁴⁴ The Chamber also reasonably noted that Mr Said’s motive to influence witnesses may be strong, given that disclosure had reached an advanced stage and Mr Said was now in possession of a lot of confidential information, including the identifies of a large number of witnesses.⁴⁵ This was not mere conjecture, but an assessment of risk grounded in the evidence and developments of this case.

11. *Third*, the Chamber did not err in relying upon open source material or uncorroborated hearsay evidence in concluding that Mr Said’s continued detention appears necessary.⁴⁶ The Defence specifically challenges the Chamber’s reliance on an NGO report dated November 2014 and a declaration of the *Coalition des Patriotes pour le Changement* (“CPC”) dated December 2020.⁴⁷ However, the Appeals Chamber has recently confirmed the long-standing principle that “‘there does not exist in the applicable law any impediment to the use of [newspaper articles or other public sources], or any requirement that it be corroborated’ and that the relevant chamber ‘must analyse all the material placed before it, in order to determine what weight must be given to it for the purpose of the determination as to whether continued detention “appeared necessary”’.”⁴⁸ Thus, in accordance with the low evidentiary threshold applicable to article 58(1)(b) assessments, previous chambers have consistently held that there is no bar to relying upon information contained in NGO reports, newspaper articles or other public sources that may amount to hearsay, for the purposes of assessing whether article 58(1)(b) is satisfied,⁴⁹ nor is there a requirement that such information be corroborated.⁵⁰ Rather, the Chamber must analyse *all* the material placed before it in order to determine what weight must be given to it for the purposes of

⁴³ [Decision](#), para. 34.

⁴⁴ [Decision](#), para. 33.

⁴⁵ [Decision](#), para. 35.

⁴⁶ *Contra* [Appeal](#), paras. 30, 32.

⁴⁷ [Appeal](#), paras. 30 (citing [Decision](#), para. 27), 32 (citing [Decision](#), para. 32).

⁴⁸ [Abd-Al-Rahman 8 October 2020 Interim Release AD](#), para. 34, citing ICC-02/11-01/11-180-Red (“[Gbagbo 13 July 2012 Interim Release Decision](#)”), para. 54, upheld in [Gbagbo 26 October 2012 Interim Release AD](#), para. 91.

⁴⁹ ICC-01/04-02/06-147 (“[Ntaganda 18 November 2013 Interim Release Decision](#)”), paras. 47-49; [Gbagbo 13 July 2012 Interim Release Decision](#), para. 54; [Ngudjolo 9 June 2008 Interim Release AD](#), paras. 23-25.

⁵⁰ [Gbagbo 13 July 2012 Interim Release Decision](#), para. 54.

determining whether continued detention “appears necessary”.⁵¹ The Chamber reasonably relied upon the material before it in this case. The Defence shows no error.

ii. The Trial Chamber provided a sufficiently reasoned opinion

12. Contrary to the Defence’s submission, and as set out above, the Chamber did not rely on unsubstantiated assumptions unsupported by the evidence. The Defence’s argument that this equally demonstrates a lack of reasoning is therefore unfounded.⁵² In any case, it is well established that the extent of the reasoning will depend on the circumstances of the case, and that the obligation to provide reasons ‘will not necessarily require reciting each and every factor that was before the [relevant chamber] to be individually set out, but [requires the relevant chamber] to identify which facts it found to be relevant in coming to its conclusion’.⁵³ In the context of a decision on continued detention, this does not mean a chamber has a duty to give a detailed analysis of each such factor, but it must provide reasons to support its findings regarding the substantive considerations relevant to its decision.⁵⁴

13. In this case, the Chamber provided clear, comprehensive and unambiguous reasoning to explain how it came to its conclusions.⁵⁵ In particular, it referred to relevant submissions by the Parties and participants,⁵⁶ expressed its view on multiple issues which were pertinent

⁵¹ [Gbagbo 13 July 2012 Interim Release Decision](#), para. 54, upheld in [Gbagbo 26 October 2012 Interim Release AD](#). See also [Ntaganda 18 November 2013 Interim Release Decision](#), paras. 47-48.

⁵² *Contra* [Appeal](#), paras. 36-39.

⁵³ [Abd-Al-Rahman 8 October 2020 Interim Release AD](#), para. 42.

⁵⁴ *Prosecutor v. Milutinović et al.*, IT-99-37-AR65.3, [Decision Refusing Milutinović Leave to Appeal](#), 3 July 2003, para. 23 (stating further that “In most applications for provisional release, it would be sufficient for a Chamber to state that the matters put forward by the applicant have not satisfied it that he will appear for trial, or that, if released, he will not pose a danger to any victim, witness or other person (in the case may be)”). See also *Prosecutor v. Šainović & Ojdanić*, IT-99-37-AR65, [Decision on Provisional Release](#), 30 October 2002, para. 6 (“A Trial Chamber is not obliged to deal with all possible factors which a Trial Chamber can take into account when deciding whether it is satisfied that, if released, an accused will appear for trial. It must, however, render a reasoned opinion. This obliges it to indicate all those relevant factors which a reasonable Trial Chamber would have been expected to take into account before coming to a decision”); *Prosecutor v. Haradinaj et al.*, IT-04-84-AR65.2, [Decision on Lahi Brahimaj’s Interlocutory Appeal against the Trial Chamber’s Decision Denying his Provisional Release](#), 9 March 2006, para. 10 (“At minimum a Trial Chamber must provide reasoning to support its findings regarding the substantive considerations relevant to its decision”).

⁵⁵ See, e.g., [Decision](#), paras. 26-29, 30-35.

⁵⁶ See e.g. [Decision](#), paras. 12-16, 27 (noting Prosecution and Defence arguments on Said’s membership of and position in the FPRC, stating that it “has carefully considered all arguments”), 28 (noting the Registry’s report of 24 January 2022 suggesting that no evidence had been found indicating that the FPRC had interfered with the proceedings to date), 29 (noting the current situation of insecurity and instability in the CAR and the Defence’s arguments as to the relevance of this factor), 31 (noting the Prosecution’s examples of recent violence by the FPRC), 32 (“tak[ing] note of the Prosecution’s argument that a number of witnesses have already faced security threats in the CAR”), 33 (noting Defence arguments regarding the relevance of the security situation in the CAR and the information provided to it by the Registry).

in reaching its conclusions,⁵⁷ addressed arguments advanced by the Defence,⁵⁸ and finally concluded that the conditions under article 58(1)(a), (b)(i) and (b)(ii) are met.⁵⁹ Simply because the Chamber did not provide the level of detailed reasoning that the Defence expected, this does not detract from the correctness and adequacy of its findings.⁶⁰ The Defence merely disagrees with the conclusions reached by the Chamber without showing any error.

14. The Defence's first ground of appeal should therefore be rejected.

B. Ground 2: The Chamber reasonably and correctly relied upon the seriousness of the charges as a factor relevant to its decision to maintain Mr Said in detention

i. The Trial Chamber did not err in law by relying upon the seriousness of charges as a factor in its article 58(1)(b)(i) assessment

15. The Defence argues that in its article 58(1)(b)(i) analysis, when taking into account the potential length of the sentence that Mr Said may face if convicted and that charges against him had been confirmed, the Chamber committed a legal error by failing to define the concept of "seriousness" of the charges since, by definition, all crimes within the Court's jurisdiction are serious.⁶¹ The Defence argues that as a result, the Chamber created a presumption of detention that would render article 60(2) of the Statute meaningless as no accused would ever be granted interim release.⁶² These arguments should be rejected. The Defence misconstrues the manner in which the Chamber relied on this factor, and merely disagrees with the Court's consistent jurisprudence on the relevance of these factors in the article 58(1)(b) assessment.

⁵⁷ See e.g., [Decision](#), paras. 26 (as to why the risk of incurring a lengthy sentence and the confirmation of charges is a relevant factor), 27 (as to why it was reasonable to conclude that Said can still count on the support of former FPRC comrades), 28 (as to why the FPRC may pose a risk of interference notwithstanding that it has not made any attempt in the past), 29 (as to the relevance of the political and military situation in the CAR), 32 (as to why the allegations of threats against Prosecution witnesses is relevant notwithstanding that the incidents may not be attributable to Said), 33 (as to factors relevant to its assessment of risk of future obstruction of justice), 34 (stating that it had reached its conclusion "[b]ased on all the information available to it"), 35 (as to the relevance of the state of disclosure).

⁵⁸ See e.g., [Decision](#), paras. 26, 27, 29, 33, 35.

⁵⁹ [Decision](#), para. 39.

⁶⁰ See by analogy [Bemba 16 December 2008 Interim Release AD](#), para. 53.

⁶¹ [Appeal](#), paras. 40-49.

⁶² [Appeal](#), para. 47.

16. *First*, the Defence’s claim that the Chamber was legally required to define the concept of “seriousness” of the charges is unpersuasive.⁶³ The seriousness of the charges is not a term of art that requires definition, but rather one that must be given its plain meaning. “Seriousness” connotes the quality of being “significant, important, dangerous, or attended by risk”.⁶⁴ The assessment of the seriousness of the charges will thus entail a *factual* determination, based on the circumstances of the case at hand. As shown below, the Chamber carried out the fact-specific assessment.⁶⁵

17. *Second*, the Chamber reasonably relied upon the Court’s prior jurisprudence to find that both the knowledge of the risk of a lengthy sentence and the confirmation of charges against an accused may increase his or her motivation to abscond.⁶⁶ In arguing that the Chamber erred in doing so, the Defence merely disagrees with the Court’s consistent and long-standing jurisprudence.⁶⁷ This disagreement is evident from the fact that the Defence criticises the respective *Bemba*, *Ntaganda*, *Gbagbo*, *Katanga* and *Lubanga* decisions cited by the Chamber for failing to provide sufficient reasons to support the conclusion that the confirmation of charges and the length of the sentence increase the risk of absconding.⁶⁸ Moreover, in criticising the *Bemba* Appeals Chamber—which upheld these principles⁶⁹—for encroaching upon the margin of appreciation to be afforded to a trial chamber and failing to provide sufficient reasons, the Defence demonstrates an unwillingness to accept the outcome of a final judgment of this Court.

18. The Defence’s criticisms of the Court’s jurisprudence are unpersuasive. It is both rational and—as the Court’s jurisprudence⁷⁰ and that of the *ad hoc* tribunals⁷¹ demonstrates—

⁶³ *Contra* [Appeal](#), para. 47.

⁶⁴ *Oxford English Dictionary*, “seriousness, n.2”.

⁶⁵ *See below* para. 21.

⁶⁶ [Decision](#), para. 26, citing ICC-01/12-01/18-786-Red (“[Al Hassan 29 May 2020 Interim Release Decision](#)”), para. 58; ICC-01/04-02/06-335 (“[Ntaganda 17 July 2014 Interim Release Decision](#)”), para. 34; ICC-02/11-01/11-668 (“[Gbagbo 11 July 2014 Interim Release Decision](#)”), para. 41; ICC-01/05-01/08-631-Red (“[Bemba 2 December 2009 Interim Release AD](#)”), para. 70; ICC-01/04-01/07-794-tENG (“[Katanga 12 December 2008 Interim Release Decision](#)”), paras. 9-10; ICC-01/04-01/06-826 (“[Lubanga 14 February 2007 Interim Release Decision](#)”), p. 6.

⁶⁷ *Contra* [Appeal](#), paras. 41-44.

⁶⁸ [Appeal](#), paras. 41-42.

⁶⁹ [Bemba 2 December 2009 Interim Release AD](#), para. 70 (“Whilst the confirmation of charges in itself constitutes a “changed circumstance”, the finding by the Pre-Trial Chamber that there were substantial grounds to believe that Mr Bemba committed the crimes charged, increased the likelihood that he might abscond. In addition, the length of the sentence that Mr Bemba is likely to serve if convicted on these charges is further incentive for him to abscond”).

⁷⁰ [Bemba 20 May 2015 Provisional Release AD](#), para. 71; [Gbagbo 26 October 2012 Interim Release AD](#), para. 54; [Mbarushimana 14 July 2011 Interim Release AD](#), para. 21; [Bemba 16 December 2008 Interim Release AD](#),

uncontroversial to conclude that the risk of an accused absconding increases with the severity of the punishment they face and the confirmation of charges against them. Thus, as the Appeals Chamber stated in *Ngudjolo*, “[e]vading justice in fear of the consequences that may befall the person becomes a distinct possibility; a possibility rising in proportion to the consequences that conviction may entail”.⁷² Similarly, the Appeals Chamber stated in *Gbagbo* that the likelihood of a lengthy prison sentence if convicted “indicates a probability that the detained person has motivation to abscond”.⁷³ The Defence fails to show any error in this logic, or in the Chamber’s reliance upon it.

19. *Third*, the Defence incorrectly asserts that reliance upon the seriousness of charges, the likely length of the sentence if convicted, and the fact that charges have been confirmed are incompatible with the detained person’s right to the presumption of innocence.⁷⁴ While Mr Said is indeed entitled to the presumption of innocence, contrary to the Defence’s claim this presumption does not play a determinative role in assessing the need for continued detention; indeed, if it were otherwise, “no accused would ever be detained, as all are presumed innocent”.⁷⁵ In any event, a chamber’s decision to arrest and detain a person does not in any way prejudice the decision whether or not to confirm the charges, or the decision whether to convict or acquit. The Defence also overlooks that aside from the rights owing to an accused, a chamber must also give due regard to the protection of victims and witnesses,⁷⁶ and take appropriate measures to protect their safety, physical and psychological well-being, dignity and privacy.⁷⁷ In this context, the Chamber appropriately calibrated its risk assessment to take into account the potential risks that victims and witnesses may face in this case if Mr Said were to be released.⁷⁸

20. *Finally*, as the Appeals Chamber has held, it is not an error to consider the seriousness of the charges in an article 58(1)(b)(i) assessment, provided it is not the *sole* factor relied

para. 55; [Ngudjolo 9 June 2008 Interim Release AD](#), para. 21; [Katanga 9 June 2008 Interim Release AD](#), paras. 21, 24; [Lubanga 13 February 2007 Interim Release AD](#), para. 136.

⁷¹ See e.g. *Prosecutor v. Limaj et al.*, IT-03-66-AR65, [Decision on Fatmir Limaj’s Request for Provisional Release](#), 31 October 2003, para. 30.

⁷² [Ngudjolo 9 June 2008 Interim Release AD](#), para. 21. See also [Gbagbo 26 October 2012 Interim Release AD](#), para. 54; [Mbarushimana 14 July 2011 Interim Release AD](#), para. 21; [Bemba 16 December 2008 Interim Release AD](#), para. 55; [Katanga 9 June 2008 Interim Release AD](#), paras. 21, 24; [Lubanga 13 February 2007 Interim Release AD](#), para. 136.

⁷³ ICC-02/11-01/15-992-Red (“[Gbagbo 19 July 2017 Interim Release AD](#)”), para. 69.

⁷⁴ [Appeal](#), paras. 46-49.

⁷⁵ *Prosecutor v. Milutinović et al.*, IT-05-87-AR65.2, [Decision on Interlocutory Appeal of Denial of Provisional Release during the Winter Recess](#), 14 December 2006, para. 12.

⁷⁶ [Statute](#), article 64(2).

⁷⁷ [Statute](#), article 68(1).

⁷⁸ [Decision](#), paras. 22, 32-35.

upon to justify continued detention under that provision.⁷⁹ Therefore, a chamber may find that the charges are serious, but nonetheless find that there are no other factors that would warrant keeping a person in detention, in which case the person must be released. The Defence's claim that the seriousness of the charges thus creates a presumption of detention is therefore misconceived.⁸⁰ Moreover, the Defence ignores that in this case, the seriousness of the charges (and its consequent impact on the likely length of the sentence) was only *one of several* factors that the Chamber relied upon in its article 58(1)(b)(i) assessment.⁸¹ The Defence's argument regarding a presumption of detention is unfounded.

ii. The Trial Chamber did not err in fact in relying upon the seriousness of charges as a factor in its article 58(1)(b)(i) assessment

21. The Defence also argues that the Chamber erred in fact by failing to carry out the analysis of the seriousness of the charges in this case.⁸² However the Defence's argument is premised on the incorrect claim that the Decision is unclear or silent as to why the Chamber considers the charges to be serious.⁸³ First, the Chamber and the Parties are well-acquainted with the confirmed charges at this stage of the proceedings, therefore it was not necessary for the Chamber to recite them. Second, the Chamber expressly acknowledged the Prosecution's submissions on the seriousness of the charges against Mr Said as confirmed by the Pre-Trial Chamber.⁸⁴ In those submissions, the Prosecution highlighted that [REDACTED].⁸⁵ Immediately after noting the Prosecution's submissions the Chamber stated, "the Chamber agrees that the knowledge of the risk of incurring a lengthy sentence may motivate the accused to abscond if given the opportunity",⁸⁶ and added that the confirmation of charges increases the risk that an accused may abscond.⁸⁷ It is therefore apparent from its reasoning that it understood the charges to be serious for the reasons set out in the Prosecution's submissions.

⁷⁹ [Lubanga 13 February 2007 Interim Release AD](#), para. 136 (finding that the Pre-Trial Chamber did not err in taking into account the gravity of the crimes because, *inter alia*, this was not the only factor it considered); [Gbagbo 26 October 2012 Interim Release AD](#), para. 54.

⁸⁰ [Appeal](#), para. 45.

⁸¹ See *above* para. 6. See also [Decision](#), paras. 26-29 (setting out the various factors relevant to its article 58(1)(b)(i) assessment); 31-35 (setting out the various factors relevant to its article 58(1)(b)(ii) assessment).

⁸² [Appeal](#), paras. 50-53.

⁸³ [Appeal](#), para.

⁸⁴ [Decision](#), para. 26.

⁸⁵ T-007-Conf-ENG, 63:21-64:3.

⁸⁶ [Decision](#), para. 26.

⁸⁷ [Decision](#), para. 26, citing [Bemba 2 December 2009 Interim Release AD](#), para. 70; [Ntaganda 17 July 2014 Interim Release Decision](#), para. 34; [Gbagbo 11 July 2014 Interim Release Decision](#), para. 41; [Katanga 12 December 2008 Interim Release Decision](#), paras. 9-10; [Lubanga 14 February 2007 Interim Release Decision](#), p. 6.

22. Moreover, while the charges against Mr Said may be more confined in terms of the timeline, geography and number of incidents as compared with other cases in the Court,⁸⁸ and while the Registry's report on victim participation indicates a smaller number of victims participating in this case at this stage compared with in other cases,⁸⁹ this does not detract from the seriousness of this case, as mentioned above.⁹⁰ The Defence thus fails to demonstrate that the Chamber's finding was unreasonable.

23. The Defence's second ground of appeal should be rejected for the foregoing reasons.

C. Ground 3: The Chamber did not err in relying upon incidents of threats concerning Prosecution witnesses

24. The Defence argues that the Chamber erred in law in its article 58(1)(b)(ii) assessment by relying on allegations of threats made to Prosecution witnesses and the "*situation sécuritaire générale*" without establishing a link between Mr Said and those threats.⁹¹ The Defence also challenges the Chamber's reliance on these allegations given they were based on uncorroborated hearsay.⁹² The Defence miscomprehends the Chamber's reasoning and takes its findings out of their proper context. Its arguments in ground 3 should be rejected.

25. Contrary to the Defence's submission,⁹³ the Chamber did not base its decision solely on the general security situation in the CAR without linking Mr Said to the risk of witness interference. Indeed the Chamber had specifically addressed and rejected that same Defence argument—that it would be unjust to prolong Mr Said's detention *solely* on the basis of precarious security situation—and found that a Chamber "must weigh the magnitude of the overall potential risk of future obstruction of justice if the detained person were to be released."⁹⁴ The Chamber also considered the Prosecution's submissions and evidence that a number of witnesses have already faced security threats and that, in particular, "in two of these incidents, a person purporting to be Mr Said's lawyer tried to meet with Prosecution witnesses and apparently revealed their status as witnesses to third persons."⁹⁵ In addition,

⁸⁸ [Appeal](#), para. 51.

⁸⁹ [Appeal](#), paras. 52-53.

⁹⁰ *See above* para. 21.

⁹¹ [Appeal](#), paras. 54-58.

⁹² [Appeal](#), para. 55.

⁹³ [Appeal](#), paras. 56-58.

⁹⁴ [Decision](#), para. 33.

⁹⁵ [Decision](#), para. 32.

based also on the information from the Registry that [REDACTED]⁹⁶ Finally, the Chamber noted that Mr Said may have strong motive to influence the Prosecution’s witnesses before the trial and that, as a result of the advanced disclosure process, he is now in possession of a lot of confidential information, including the identities of a large number of witnesses.⁹⁷

26. The Chamber then considered “how easy it would be for the detained persons, once released, to interfere with witnesses or otherwise obstruct justice” in a situation marked by extreme insecurity and instability, and concluded that Mr Said would be in a favourable position to effectively interfere.⁹⁸ Thus, contrary to the Defence’s submission, the Chamber expressly established a link between the detained person and the fragile security situation for ICC witnesses in CAR, in the sense that, if he were released into such a situation, he would have an opportunity to effectively interfere.⁹⁹

27. Further, the Chamber was entitled to rely on uncorroborated hearsay evidence to reach its conclusion on article 58(1)(b).¹⁰⁰ As discussed above,¹⁰¹ chambers of this Court have consistently held that the test in article 58(1)(b) is a low one, requiring only an “appearance” of “necessity” to maintain detention¹⁰² and that in accordance with the lower evidentiary threshold, there is no bar to relying upon information contained in NGO reports, newspaper articles or other public sources that may amount to hearsay¹⁰³ nor is there a requirement that such information be corroborated.¹⁰⁴

28. For these reasons, the third ground of the Appeal should be rejected.

D. Ground 4: The Chamber did not err in relying upon an *ex parte* annex to the Registry Report

29. The Defence argues that the Chamber erred in law by relying upon information annexed to a Registry report to which the Defence did not have access, thus preventing the Defence from being able to challenge its conclusions in accordance with the adversarial

⁹⁶ [Decision](#), para. 33.

⁹⁷ [Decision](#), para. 35.

⁹⁸ [Decision](#), para. 33.

⁹⁹ *Contra* [Appeal](#), para. 57.

¹⁰⁰ [Decision](#), paras. 32; *Contra* [Appeal](#), paras 54-55.

¹⁰¹ *See above* para. 11.

¹⁰² [Ntaganda 18 November 2013 Interim Release Decision](#), paras. 36, 47 (confirmed in ICC-01/04-02/06-271-Red (“[Ntaganda 5 March 2014 Interim Release AD](#)”), paras. 35-36).

¹⁰³ [Ntaganda 18 November 2013 Interim Release Decision](#), paras. 47-49; [Gbagbo 13 July 2012 Interim Release Decision](#), para. 54; [Ngudjolo 9 June 2008 Interim Release AD](#), paras. 23-25.

¹⁰⁴ [Gbagbo 13 July 2012 Interim Release Decision](#), para. 54.

principle.¹⁰⁵ The Defence further claims that the information in the annex also contradicted other information from the Registry. The Defence's arguments are misconceived.

30. *First*, as submitted above in response to the third ground of appeal, the Chamber reasonably concluded that the risk of witness interference remained high based on *all* information available to it, including from the Prosecution and the Registry.¹⁰⁶ With respect to the information from the Registry, the Chamber noted not only the Registry report (available to the Defence),¹⁰⁷ but information in a confidential *ex parte* annex to this report (to which the Prosecution also does not have access) ("Annex"), which indicated that the "[REDACTED]".¹⁰⁸

31. *Second*, as stated by the Appeals Chamber in a different, but relevant context concerning the imposition of contact restrictions under regulation 101 of the Regulations,¹⁰⁹ a [REDACTED]¹¹⁰ While the detained person should know the reasons for his or her detention, a Trial Chamber is not barred from reviewing some material that has been withheld from the detainee for diverse reasons—such as those expressly identified in the Registry Report, in particular, that it referred to information with the same level of confidentiality.¹¹¹ [REDACTED].¹¹² [REDACTED]¹¹³

32. In this case, the Decision expressly refers to a specific aspect in the Annex, the Registry Report itself, as well as information from the Prosecution that the Chamber relied on in reaching the Decision.¹¹⁴ The Decision cites this Annex's classification as a *confidential ex parte* document,¹¹⁵ indicating the Chamber was aware the Defence did not have access to it when reaching the Decision. And in any event, the Defence has been afforded the opportunity to challenge that aspect of the Annex on appeal.

¹⁰⁵ [Appeal](#), paras. 59-61.

¹⁰⁶ [Decision](#), paras. 31-36.

¹⁰⁷ ICC-01/14-01/21-232-Conf (public redacted version: ICC-01/14-01/21-232-Red) ("[Registry Report](#)").

¹⁰⁸ [Decision](#), para. 33, referring to ICC-01/14-01/21-232-Conf-Exp-Anx ("Annex").

¹⁰⁹ Like regulation 101 of the [Regulations](#), pre-trial detention involves a restriction on the accused person's liberty. Therefore, the Court's case-law under Regulation 101 cited below is relevant.

¹¹⁰ ICC-01/14-01/21-111-Conf-Red ("[Contact Restrictions AD](#)"), para. 69.

¹¹¹ The Registry Report states that it classified the Annex to the Report as "confidential *ex parte* available only to the Registry" because "it refers to information with the same level of classification and to the [REDACTED]." [Registry Report](#), para. 3. (Emphasis added).

¹¹² [Contact Restrictions AD](#), para. 69.

¹¹³ [Contact Restrictions AD](#), para. 69. (Material in italics added for clarity.)

¹¹⁴ [Decision](#), para. 33.

¹¹⁵ [Decision](#), para. 33 (fn. 58).

33. *Third*, even if the Defence did not have access to the specific information in the Annex that it now seeks to challenge, it has not demonstrated that it was materially affected, [REDACTED].¹¹⁶ In particular, as the Chamber found, [REDACTED] “[i]ndications 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 the proceedings, either personally or through *third persons*.”¹¹⁷ This is consistent with the Prosecution’s own submissions and evidence that was accessible to the Defence. For instance, noting that Mr Said continued to hold a leadership position in the FPRC, the Prosecution submitted that Mr Said had *access to a support network* (which could provide him with the necessary funds and means to abscond).¹¹⁸ The Prosecution relied on the existence of such a support network for Mr Said to also argue that he could use the same network to obstruct investigations, including by interfering with or threatening witnesses.¹¹⁹

34. In addition, the Chamber considered the Prosecution information concerning two incidents in which a person purporting to be Mr Said’s lawyer, tried to meet witnesses and apparently revealed their status as witnesses to third parties.¹²⁰ These two incidents also revealed the potential risk that Mr Said might have *support* within the population or rebel groups in the CAR, and Mr Said was able to dispute the existence of such risk of support among the population or rebel organisations through the information provided by the Prosecution.

35. Moreover, information in the Registry Report [REDACTED].¹²¹

36. Therefore, even if the Defence did not have access to the Annex, it had access to material from the Prosecution and information in the Registry Report [REDACTED] and was able to challenge this information.¹²²

37. *Finally*, there is no contradiction between the specific aspects in the Annex and the Registry Report (to which the Annex was attached) that Mr Said challenges.¹²³ On the one

¹¹⁶ See also [Contact Restrictions AD](#), para. 76.

¹¹⁷ [Decision](#), para. 33 (noting that the Registry Report indicated that “[REDACTED]”). (Emphasis added.)

¹¹⁸ [Decision](#), para. 27. See also [REDACTED]; [Prosecution Additional Submissions on Detention](#), paras. 19-22.

¹¹⁹ [Decision](#), para. 31. See also [Prosecution Additional Submissions on Detention](#), para. 23.

¹²⁰ [Decision](#), para. 31.

¹²¹ See e.g. [Registry Report](#), paras. 18, 19.

¹²² See e.g. ICC-01/14-01/21-239-Conf-Red (public redacted version: ICC-01/14-01/21-239-Red2) (“[Defence Response to Prosecution Submissions](#)”), paras. 12-13, 17-30.

¹²³ *Contra* [Appeal](#), paras. 60-62.

hand, the information in paragraphs 16 and 17 of the Registry Report—in which the Registry [REDACTED]¹²⁴ [REDACTED]¹²⁵

38. On the other hand, the information in the Annex that the Chamber referred to in paragraph 33 of the Decision, specifically deals with [REDACTED].¹²⁶ Indeed, as rightly noted by the Chamber, [REDACTED]¹²⁷

39. These two sources of information—the Registry Report [REDACTED] on the one hand, and the Annex [REDACTED]— are not contradictory. In fact, [REDACTED].¹²⁸ Indeed, [REDACTED].¹²⁹ Therefore the two sets of information are consistent.

40. Based on the above, the fourth ground of the Appeal should be rejected.

E. Ground 5: The Chamber did not err in considering the impact of disclosure in its article 58(1)(b)(ii) assessment

41. The Defence argues that the Chamber erred in law by considering the disclosure of confidential information and the identities of witnesses to the Defence as a factor relevant to its article 58(1)(b)(ii) assessment.¹³⁰ The Defence argues that this approach creates a presumption of detention, and thus puts the accused in the impossible position of having to choose between the right to be informed of the charges, and the right to liberty.¹³¹ The Defence’s arguments should be rejected. They advance an incorrect approach to the assessment of risks under article 58(1)(b)(ii), and erroneously assume that the Chamber relied upon this factor alone in finding that article 58(1)(b)(ii) is met.

42. *First*, it was both logical and reasonable for the Chamber to take into account the fact that witness identities and evidence had been disclosed to the Defence in concluding that the

¹²⁴ [Decision](#), para. 28 (referring to the [Registry Report](#)). (Emphasis added.)

¹²⁵ [Decision](#), para. 28. (Emphasis added.)

¹²⁶ Annex.

¹²⁷ [Decision](#), para. 33. (Emphasis added.)

¹²⁸ [Registry Report](#), paras. 18, 19.

¹²⁹ [Decision](#), para. 28 (“The Chamber is aware of the Registry’s report of 24 January 2022, which suggests that no evidence has been found indicating that the FPRC has, so far, done anything to interfere with current proceedings. While this may be the case, the Chamber points out that, given the circumstances, this organisation has hitherto not had the occasion to assist Mr Said in any effort to abscond. *However, this does not show that it would not do so if given the opportunity. Moreover, the Chamber is not only concerned about the possibility that the FPRC as an organisation might offer assistance to Mr Said, but equally that individual members may do so in their private capacity*”). (Emphasis added.)

¹³⁰ [Appeal](#), paras. 62-65.

¹³¹ [Appeal](#), para. 62.

risk of potential witness interference remains high if Mr Said were to be released.¹³² As the Appeals Chamber upheld in *Gbagbo*, an accused's knowledge of the Prosecution evidence and witness identities through disclosure inevitably enhances their motive and means to interfere with witnesses if they so wish, and substantially increases the risks to witnesses.¹³³ This was accordingly a highly relevant factor for the Chamber to take into consideration, and it did so reasonably in this case.¹³⁴

43. *Second*, the Defence argues that allowing a chamber to 'generically' take into account the fact of disclosure without having to adapt it to the specific case creates a presumption of maintenance in detention.¹³⁵ However this argument is based on the erroneous premise that a chamber can rely on this factor alone to maintain a person in detention. As the Appeals Chamber has confirmed, the disclosure of the evidence "is but one factor that the [chamber] may take into account when determining whether continued detention appears necessary under article 58(1)(b)(ii) of the Statute".¹³⁶ The Chamber in this case appropriately took this factor into account as one of several relevant factors to its article 58(1)(b)(ii) analysis.¹³⁷ Hence, there was no presumption of maintenance in detention. Nor does this factor force an accused to choose between the right to be informed of the evidence supporting the charges and the right to liberty.¹³⁸

44. The Defence's fifth ground of appeal should therefore be rejected.

F. The Defence fails to demonstrate the material impact of the errors

45. The Defence argues that all of the errors that it identified in the Appeal materially affected the Decision, because in the absence of these errors, the Chamber could not have relied on any factual or legal basis to justify its assessment under article 58(1)(b).¹³⁹ This argument is unpersuasive. Even if *arguendo* the Chamber did err in any respect, each of the Defence's five grounds of appeal fails to appreciate the full range of factors that the Chamber

¹³² [Decision](#), paras. 35-36.

¹³³ [Gbagbo 26 October 2012 Interim Release AD](#), para. 65 ("Disclosure enhances the detainee's knowledge of the Prosecutor's investigation, Therefore under article 58(1)(b)(ii) of the Statute it may be a relevant factor. Accordingly, the Appeals Chamber considers that the Pre-Trial Chamber did not have to explain the specific circumstances relating to the disclosure of evidence and how they amplified the risk").

¹³⁴ [Decision](#), para. 35.

¹³⁵ [Appeal](#), para. 64.

¹³⁶ [Gbagbo 26 October 2012 Interim Release AD](#), para. 65.

¹³⁷ [Decision](#), paras. 32-35.

¹³⁸ *Contra* [Appeal](#), para. 62.

¹³⁹ [Appeal](#), para. 66.

reasonably relied upon to reach its conclusions under article 58(1)(b)(i) and (ii),¹⁴⁰ and does not demonstrate how any error would have affected the Chamber's assessment in light of those other factors.

G. Mr Said's appeal against the decision maintaining his contact restrictions should be dismissed *in limine*

46. The Defence also appeals the Chamber's decision to maintain the contact restrictions placed on Mr Said, arguing that to the extent that the Chamber relied upon the same reasons for maintaining him in detention as it did for maintaining his contact restrictions, the same alleged errors would have the effect of invalidating the decision on contact restrictions.¹⁴¹ The Defence's attempt to appeal this aspect of the Chamber's decision should be dismissed *in limine*. While the Chamber issued a consolidated decision on interim release and on contact restrictions, a party may only appeal as a matter of right "a decision granting or denying release".¹⁴² The Chamber's decision on contact restrictions is not a decision granting or denying release, but instead one concerning the conditions applicable to Mr Said while in detention. The Defence was therefore required to seek leave to appeal that particular decision under article 82(1)(d),¹⁴³ which it did not do. Nor has the Defence offered any explanation in its Appeal as to why this aspect of the decision can be directly appealed. In any event, even if the Appeals Chamber were to consider this aspect of the Appeal, the Prosecution submits that it should be rejected for failing to identify any error for all the reasons set out above in response to the five grounds of appeal on the decision to maintain Mr Said in detention.

¹⁴⁰ See above para. 6; [Decision](#), paras. 26-29, 31-35.

¹⁴¹ [Appeal](#), para. 67.

¹⁴² [Statute](#), article 82(1)(b).

¹⁴³ [Statute](#), article 82(1)(d); [Rules of Procedure and Evidence](#), rule 155(1).

CONCLUSION AND RELIEF SOUGHT

47. For the foregoing reasons the Prosecution respectfully requests the Appeals Chamber to dismiss the Appeal and affirm the Decision.



Karim A. A. Khan QC, Prosecutor

Dated this 5th day of April 2022
At The Hague, The Netherlands