

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 20 May 2022

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 “Registry Report on the Implementation of the Restrictions on Contact Ordered by the Single Judge”, (ICC-01/14-01/21-23-Conf-Exp), filed on 24 February 2021

Source: Registry

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

Mr Mame Mandiaye Niang

Mr Eric MacDonald

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 the Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

Mr Harry Tjonk

**Victims Participation and Reparations
Section**

I. Introduction

1. Following the “Decision on the ‘Prosecution’s Request for Contact Restrictions concerning Mahamat Said Abdel Kani in Pre-trial Detention’” (“Decision”)¹ issued by the Single Judge of Pre-Trial Chamber II (“Single Judge”) on 3 February 2021, in which the Registry was ordered to submit a report on the implementation of the restrictions on contact for Mr Mahamat Said Abdel Kani (“Mr Said”) by no later than 24 February 2021, the Registry hereby submits its report.

II. Procedural history

2. On 22 January 2021, the Office of the Prosecutor (“Prosecutor”) submitted to Pre-Trial Chamber II (“Chamber”) its “Prosecution’s Request for Contact Restrictions concerning Mahamat Said Abdel Kani in Pre-trial Detention”.²
3. On 22 January 2021, the Chamber ordered the Registry to provisionally apply certain restrictions to Mr Said’s contacts, and to provisionally separate Mr Said from Messrs Alfred Rombhot Yekatom (“Yekatom”) and Patrick Edouard Ngaïssona (“Ngaïssona”) upon Mr Said’s arrival at the International Criminal Court Detention Centre (respectively “ICC” and “DC”).³

¹ Pre-Trial Chamber II, “Decision on the ‘Prosecution’s Request for Contact Restrictions concerning Mahamat Said Abdel Kani in Pre-trial Detention’”, (“Decision”) 3 February 2021, ICC-01/14-01/21-9-Conf-Red.

² Office of the Prosecutor, “Prosecution’s Request for Contact Restrictions concerning Mahamat Said Abdel Kani in Pre-trial Chamber II”, 22 January 2021, ICC-01/14-133-US-Exp.

³ Email from the Pre-Trial Chamber II to the Registry dated 22 January 2021, at 18:42 hours.

4. On 24 January 2021, Mr Said was surrendered to the ICC and arrived at the DC on 25 January 2021.⁴ Mr Said was provisionally separated from Messrs Yekatom and Ngaissona upon his arrival at the DC and restrictions on contact were applied as ordered by the Chamber.

5. On 3 February 2021, the Single Judge issued his Decision, directing the Registry to put in place the following contact restrictions until 3 March 2021:⁵ 1) actively monitor Mr Said's non-privileged telephone calls, non-privileged visits and written correspondence, with the exception of those to or from the persons identified in regulation 97 and 98 of the RoC and 174 (1) of the RoR, 2) restrict his non-privileged contacts to "immediate family members provided that their identities and contact details have been thoroughly verified with the support of the Victims and Witnesses Unit in liaison with the Prosecutor",⁶ 3) communication limited to French and Sango, 4) limit telephone calls to 60 minutes per week, 5) prohibit the use of obscure or coded language, 6) prohibit any case-related discussion with his non-privileged contacts, and 7) stop any telephone calls, visits or intercept written correspondence violating the Single Judge's orders.

6. The Single Judge also ordered the Registry to submit, by 24 February 2021 a report "[...] on the implementation of these restrictions, including an assessment of the feasibility of active monitoring and a description of the procedure for verifying and evaluating the identity and contact details of Mr Said's contacts [...]"⁷.

⁴ Registry, "Report of the Registry on the Arrest and Surrender of Mr Mahamat Said Abdel Kani and Request for Guidance", 27 January 2021, ICC-01/14-01/21-6-US-Exp, paras. 13-27.

⁵ Decision, paras. 21-27.

⁶ Decision, para. 21.

⁷ Decision, para. 27.

7. On 22 February 2021 the Prosecutor filed its “Prosecution’s Request for Extension of Contact Restrictions” (“Prosecution’s Request”), requesting that contact restrictions be extended for a further three months,⁸ that the Registry be instructed to consult the Prosecution in adding non-privileged contacts,⁹ and that the Single Judge review Mr Said’s communications.¹⁰

III. Classification

8. In accordance with regulation 23*bis* (1) of the Regulations of the Court (“RoC”), the present report is classified as confidential *ex parte* only available to the Registry, as it contains confidential operational working methods of the Registry. A confidential redacted version available to the Prosecution and the Defence will be filed simultaneously.

IV. Applicable law

9. For the purpose of the present submission, the Registry has considered regulations 92, 99(1)(i), 100 and 101 of the RoC, and regulations 173, 174, 175, 179, 180 and 189 of the RoR.

V. Submissions

The implementation of the contact restrictions

10. As set out in his Decision, the Single Judge ordered restrictions on contact for Mr Said’s non-privileged visitors, non-privileged telephone contacts, and written correspondence.¹¹ The Registry has no incidents to report to the Single Judge, for the reasons detailed below.

⁸ Office of the Prosecutor, “Prosecution’s Request for Extension of Contact Restrictions” (“Prosecution’s Request”), 22 February 2021, ICC-01/14-01/21-22-Conf, para. 1.

⁹ Prosecution’s Request, para. 13.

¹⁰ Prosecution’s Request, para. 14.

¹¹ Decision, paras. 21-27.

11. As a preliminary matter, the Registry informs the Single Judge that, due to the global COVID-19 pandemic (“Pandemic”), measures are currently in place at the DC in order to protect the health, safety and lives of detained persons, by minimizing contacts to detained persons and thus their risk of exposure to the virus, to the extent possible. The current COVID-19 measures include, *inter alia*, the suspension of all in-person visits, including legal and non-privileged family visits. The measures are in place until at least 18 March 2021, with the possibility of renewal.
12. Therefore, at this time non-privileged visitors to Mr Said and all other detained persons are suspended. Should the restrictions on Mr Said’s contacts be in place when non-privileged visits resume at the DC, the Registry would implement the Single Judge’s orders regarding visits at that time.
13. Regarding non-privileged telephone calls, the Registry is ready to implement the Single Judge’s restrictions on contact. Following Registry procedures at the DC, detained persons who wish to add telephone contacts to their non-privileged telephone contact list must submit the required forms for verification in accordance with regulation 173(4) of the RoR.
14. At the time of this report, Mr Said has not yet submitted any request to add contacts to his non-privileged telephone list. Should Mr Said request to add contacts, the Registry would implement the verification procedure explained below.

15. The Registry has nothing to report at this time regarding written correspondence as Mr Said has not yet sent or received such correspondence.

An assessment of the feasibility of active monitoring

16. The Registry reports to the Single Judge that it is able to implement the active monitoring of Mr Said's non-privileged telephone calls, twice a week, in either Sango or French, for 30 minutes each day of calling time. [REDACTED].

17. [REDACTED].

Description of the procedure for verifying and evaluating the identity and contact details of Mr Said's contacts

18. The Chamber has ordered that the Registry restrict Mr Said's non-privileged contacts to immediate family members, whose identities and contact information are thoroughly verified with the support of the Victims and Witnesses Unit ("VWU"), in liaison with the Prosecution.¹²
19. As regards "immediate family members", the Registry informs the Single Judge that, for the purposes of active monitoring, the Registry considers that this includes children, recognized partners or spouses, parents of the detained persons, and occasionally brothers and sisters.
20. The Registry reports that the procedure for verifying the identities and contact details for Mr Said's contacts would entail 1) initial verification by DC Registry staff, followed by the additionally ordered steps of 2) consultation with the VWU, and 3) consultation with the Prosecution.

¹² Decision, para. 21.

21. [REDACTED].

22. As ordered by the Single Judge, should Mr Said request to add non-privileged contacts to his telephone list, the CCO would consult with the VWU for additional information before making a determination on whether a contact may be added to the telephone list, having regard to regulation 175(1) of the RoR.

23. [REDACTED].

24. [REDACTED].

25. [REDACTED].

26. [REDACTED].

27. [REDACTED].

28. [REDACTED].

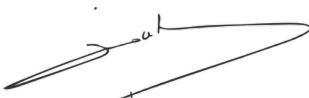
29. [REDACTED].

30. The Registry observes that the information contained in the standard DC telephone contact form is considered to be part of a detained persons' detention record, as governed by regulation 92 of the RoC and regulation 189 of the RoR. Therefore, should consultation with the Prosecution be maintained, the Registry considers that only minimal private information from a detained person should be shared, such as the name requested to be added.

Registry observations on the Prosecution's Request

31. The Prosecution requests to be involved in the vetting of both 1) Mr Said's immediate family members and 2) [REDACTED].¹³ [REDACTED].¹⁴

32. In requesting involvement in the Registry's verification process for non-privileged contacts the Prosecution states that "[o]n the basis of its experience in previous cases, the Prosecution wishes to avoid the risk that "other persons" may be added to the contact list of SAID without a thorough verification and vetting process",¹⁵ but does not provide context or citation to these experiences, adding that detained persons in the past have committed serious breaches while at the DC, impacting ICC proceedings.¹⁶



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

Dated this 20 May 2022

At The Hague, the Netherlands

¹³ Prosecution's Request, para. 10.

¹⁴ Prosecution's Request, para. 11.

¹⁵ Prosecution's Request, para. 12.

¹⁶ Prosecution's Request, para. 12.