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Date: **4 August 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 "Response to Defence Appeal against the "First Review of the Detention of Mr Mahamat Said Abdel Kani" (ICC-01/14-01/21-409-Conf)", ICC-01/14-01/21-421-Conf, dated 21 July 2022

Source: **Office of the Prosecutor**

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

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Introduction

1. On 29 June 2022, the Trial Chamber issued its first decision pursuant to article 60(3) of the Rome Statute, affirming the continued necessity of Mr Said's detention.[1] This was based on the absence of any material change of circumstances since it had initially denied his application for provisional release pending trial.[2] While the Defence now appeals that decision, it fails to show that the Chamber erred in law or fact.[3] To the contrary, it merely disagrees with the Chamber's reasoning, which was both legally correct and reasonable in its appreciation of the circumstances.

2. In its initial article 60(2) decision on Mr Said's detention of 3 March 2022—which forms the essential context for the decision now appealed—the Chamber had determined that there is a significant risk that Mr Said may abscond if he returns to the Central African Republic (CAR), with or without conditions,[4] and that likewise he might potentially interfere with witnesses.[5] These findings satisfied the criteria of article 58(1)(b)(i) and (ii) for continued remand in custody. Material to its assessment were the Chamber's views that:

- Mr Said might be motivated to abscond if given the opportunity, notwithstanding his personal assurances to the Chamber;[6]
- within CAR territory, Mr Said could "still count on the support of former comrades, some of whom still occupy senior positions";[7]
- if Mr Said "were released, he would be in a favourable position to effectively interfere with ongoing investigations or the proceedings, either personally or through third persons" and "may have a strong motive" to do so;[8] and
- the CAR authorities did not have the capability to monitor Mr Said's whereabouts on their territory, to re-arrest and surrender him if he refused to comply with an order of the Chamber, or to enforce any conditions set by the Chamber.[9]

[1] ICC-01/14-01/21-382 ("Decision"), para. 35.
[2] *See* ICC-01/14-01/21-247-Red ("Initial Detention Decision"), paras. 17-19, 39-40.
[3] *Contra* ICC-01/14-01/21-409-Conf ("Appeal").
[4] Initial Detention Decision, para. 30.
[5] Initial Detention Decision, para. 36.
[6] Initial Detention Decision, para. 26.
[7] Initial Detention Decision, para. 27.
[8] Initial Detention Decision, paras. 33, 35.

3. In its judgment of 19 May 2022, the Appeals Chamber unanimously confirmed the Initial Detention Decision.[10] Notably, it stressed that article 60(2) calls for a chamber to determine "the *possibility*, and not the inevitability, that one of the events listed in article 58(1)(b) will occur".[11] It found that the Chamber did not err in concluding that there was a risk of Mr Said absconding or interfering with witnesses.[12]

4. As the Chamber rightly found in its most recent Decision, none of the circumstances underpinning these previous findings has materially changed.

Confidentiality

5. This response is filed confidentially, consistent with the classification of the Appeal. Once the Defence has filed a public redacted version, the Prosecution will file a public redacted version of this response.

Submissions

6. The Appeal fails to show any error warranting intervention by the Appeals Chamber. Quite apart from its specific misunderstandings of the Chamber's reasoning, as further addressed below, the Defence disputes the general approach of the Decision.[13] While it is true that pre-trial detention is exceptional, this principle does not justify the Defence's strained interpretation of article 60(3)—which rests on the misconception that the Chamber was required to make a fresh determination *ab initio* of all the circumstances relevant to article 58(1)(b).[14]

7. To the contrary, as the Chamber correctly recalled, the Appeals Chamber has repeatedly affirmed that:

> '[A] ruling on detention under article 60(3) of the Statute does *not* require the Chamber to make a decision on detention *ab initio*.' Rather, the Chamber must refer to its initial ruling on detention under article 60(2) of the Statute to assess whether there is a change in the circumstances underlying its previous decision. If the Chamber identifies

[9] Initial Detention Decision, paras. 29, 39.
[10] ICC-01/14-01/21-318 OA3 ("Appeal Judgment"), para. 77.
[11] Appeal Judgment, para. 33 (emphasis supplied).
[12] Appeal Judgment, paras. 34-35, 54.
[13] *See* Appeal, paras. 16-19, 22. *See also* para. 20 (concerning the presumption of innocence).
[14] *Contra* Appeal, paras. 23-30, 38.

changed circumstances, it must 'consider their impact on the factors that formed the basis for the decision to keep the person in detention'.[15]

8. Specifically, a chamber is "*not* expected 'to enter findings on the circumstances already decided upon', or 'entertain submissions by the detained person that merely repeat arguments that the Chamber has already addressed'."[16]

9. There are compelling and obvious considerations supporting the correctness of this authoritative case-law. First, the approach urged by the Defence would be inconsistent with the express distinction between the terms of article 60(2) and (3) of the Statute, which clearly envisages a different procedure for the two analyses. Second, the proposed Defence approach would be more cumbersome than the *status quo* and detrimental to judicial economy—a significant concern in a procedure that is repeated, under rule 118(2), at least every 120 days for as long as article 60(3) is applicable. Third, and most importantly, the proposed Defence approach is unnecessary to protect the detained person against arbitrary detention. For this purpose, within the framework of a properly reasoned decision under article 60(2), it is wholly sufficient for a chamber to consider the threshold question whether a material change of circumstances has been concretely established, based on a review of the current circumstances as a whole.[17] Only if it is satisfied of such a change is it necessary then to consider any impact of that change.[18] This does not mean, as the Defence claims, that decisions under article 60(3) are based on theoretical hypotheses or assumptions about the relevant facts, that the burden of proof is impermissibly reversed, or that it becomes impossible to contradict an initial decision under article 60(2).[19]

10. The Chamber's reasoning in the Decision was precisely consistent with these statements of the law. In considering whether there was a material change of circumstances for the purpose of article 60(3), the Chamber therefore rejected the Defence claim that it was necessary to establish anew, "with fresh evidence, that the conditions justifying detention still

[15] Decision, para. 24 (emphasis supplied, citing ICC-01/05-01/08-1019 OA4 ("*Bemba* 2010 Detention Appeal Judgment"), paras. 52-53; ICC-01/05-01/08-1626-Red OA7 ("*Bemba* 2011 First Detention Appeal Judgment"), paras. 39, 71; ICC-01/05-01/08-1722 OA8 ("*Bemba* 2011 Second Detention Appeal Judgment"), para. 30; ICC-01/05-01/08-2151-Red OA10 ("*Bemba* 2012 Detention Appeal Judgment"), paras. 1, 31; ICC-02/11-01/11-278-Red OA ("*Gbagbo* 2012 Detention Appeal Judgment"), para. 23; ICC-02/11-01/11-548-Red OA4 ("*Gbagbo* 2013 Detention Appeal Judgment"), para. 41; ICC-02/11-01/15-992-Red OA10 ("*Gbagbo* 2017 Detention Appeal Judgment"), para. 39).
[16] Decision, para. 26 (emphasis added, citing *Bemba* 2010 Detention Appeal Judgment, para. 53; *Bemba* 2011 First Detention Appeal Judgment, para. 60; *Gbagbo* 2013 Detention Appeal Judgment, para. 52).
[17] Decision, para. 25.
[18] Decision, para. 26.
[19] *Contra* Appeal, paras. 39-41.

exist" since an evaluation under article 60(3) is "not starting from a blank slate".[20] Rather, it concluded that, "[i]f the Chamber is satisfied that it would reach the same or substantially similar conclusions today as it did in the original decision, then the accused must remain in detention."[21] In this context, it correctly and reasonably determined that Defence arguments which—without more—simply disagreed with the conclusions of the Initial Detention Decision were impermissible efforts to re-litigate issues that had already been decided, and did not themselves require any further justification for their rejection.[22]

11. The Chamber proceeded to consider whether there was any evidence of a material change of circumstances based not only on the parties' submissions but also on "an independent assessment of the security situation inside the CAR" provided by the Registry.[23] While the Chamber considered that the submissions of the Prosecution were not sufficiently concrete,[24] it stressed that it remains vested with an "independent responsibility to assess whether or not the circumstances justifying detention remain in place" and accordingly analysed the parties' submissions and the relevant circumstances within that context.[25] In particular, it found that it "appear[s] clearly from the Registry Report that the security situation inside the CAR continues to be tense and volatile", and that the CAR authorities still "appear to only have limited capacity to apprehend fugitives or protect victims and witnesses."[26] In this context, where the Chamber's original view that Mr Said might be motivated to abscond or to interfere with witnesses likewise remained unchanged,[27] then it correctly and reasonably concluded that there was no material change in circumstances requiring amendment of the Initial Detention Decision.[28]

12. As the following paragraphs explain in greater detail, none of the four grounds of appeal raised by the Defence has any merit.[29] They should be dismissed. In any event, even if *arguendo* the Chamber did somehow make a technical error, the Defence fails to show that the Decision was materially affected as a result.[30]

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[20] Decision, para. 29.
[21] Decision, para. 29.
[22] Decision, para. 28.
[23] *See* Decision, para. 31.
[24] Decision, para. 30. The Prosecution has noted this guidance, and will adapt its future approach accordingly.
[25] Decision, paras. 31-32.
[26] Decision, para. 33.
[27] *See above* para. 2.
[28] Decision, paras. 34-35.
[29] *Contra* Appeal, paras. 44-84.
[30] *Contra* Appeal, para. 85.

A. First ground of appeal: the Chamber did not err in law or fact in rejecting the Defence arguments

13. The Chamber found that:

> [A]s regards the Defence's specific arguments that it has not been established that (i) Mr Said can still count on supporters in the CAR, (ii) that there is no link between him and the FPRC, and (iii) that he has demonstrated a willingness to appear, the Chamber considers that the Defence is re-litigating issues that were already determined by the Chamber in the Initial Detention Decision and confirmed on appeal. The Chamber will therefore not consider these arguments further.[31]

14. The Defence challenges this conclusion on the basis of four sub-grounds of appeal.[32] However, none of them shows any error of law or fact in the Decision.

A.1. The Chamber did not err in law in concluding that the Defence merely sought to re-litigate issues that had already been determined

15. The Defence asserts that the Chamber was wrong to consider that it was merely re-litigating issues that had already been determined in the Initial Detention Decision.[33] In particular, it suggests that the Chamber wrongly assumed that the Defence submissions should be dismissed simply because they related to factual matters that the Chamber had previously considered[34]—including those it was required to consider by article 58(1) itself.[35]

16. But this criticism cannot be sustained because it simply misinterprets the reasoning in the Decision. The Defence was allowed to address issues already determined, but it was required to do so based on *new* evidence showing a change of circumstances. In other words, its arguments were rejected because of their *content and manner of reasoning* and not because of their *subject matter*. For example, the weight to be given to the fact that Mr Said had formerly given the Chamber an assurance that he would appear at trial was assessed in the Initial Detention Decision.[36] Clearly, the Defence was permitted to address this issue again for the subsequent purpose of article 60(3). Yet in doing so, while it was open to the Defence to raise some *new* evidentiary development to show (in its view) that the basis for the Chamber's original assessment had *changed*, it was not entitled simply to "reiterate [Mr

[31] Decision, para. 28.
[32] Appeal, para. 44.
[33] Appeal, para. 48.
[34] Appeal, para. 45. *See further e.g.* para. 46.
[35] *See e.g.* Appeal, para. 47.
[36] Initial Detention Decision, para. 26.

Said's] undertakings" in the speculative hope that the Chamber would take a different view on the matter second time round. In the Appeal, the Defence mistakes the Chamber's ruling on re-litigation as meaning that it was barred from raising the issue—when, in reality, it was merely barred from repeating its prior arguments based on the same evidence.[37]

17. Likewise, the Defence is clearly re-litigating past matters when it refers in the Appeal to its criticisms (in its 10 June 2022 response) of the report prepared by the Registry for the purpose of the *Initial Detention Decision*—which was of very limited relevance (if any) to the Chamber's more recent Decision.[38] Clearly, since this report referred to the situation *prior* to the Chamber's original decision under article 60(2), which it pre-dated, it could not itself directly show any subsequent and material change in circumstances. And it was presumably for this reason that the Chamber directed the Registry (one week after the Defence 10 June 2022 response) to submit a further report, which the Defence then received a further opportunity to address on 24 June 2022.[39] It was this second report which formed the context for the Chamber's assessment in the Decision, and in this respect the Chamber expressly took account of the Defence submissions—which it did not reject as re-litigation.[40] The Defence thus confuses matters on which its arguments were considered and rejected on their merits (pertaining to the circumstances described in the Registry's (second) report) and those rejected as re-litigation (repeating submissions and conclusions already considered for the purpose of the Initial Detention Decision).

A.2. The Chamber did not refuse to carry out its duties under article 60(3), or err in law in this respect

18. The Defence further asserts that the Chamber erred in law because rejecting Defence arguments as re-litigation amounted to a refusal to discharge the duties expressly required by article 60(3).[41] This is incorrect, because it is based on the unfounded assumption that the Chamber's approach prevented it from considering the continued accuracy of the past factual findings upon which the Initial Detention Decision was based.[42] Clearly, this was not the case. The Chamber not only referred expressly to its "independent responsibility to assess

[37] *Contra* Appeal, para. 47.
[38] *Contra* Appeal, para. 46.
[39] *See* Decision, paras. 11, 13.
[40] *See e.g.* Decision, para. 32 (expressly citing "Defence Observations", which were the designated short-citation title for the further Defence observations filed in response to the Registrar's report on 24 June 2022: *see* para. 13).
[41] Appeal, para. 49.
[42] *Contra* Appeal, para. 49 (opining that, if one were to follow the Trial Chamber, it would be sufficient for it to decide once on the existence of a circumstances for that circumstance to be considered true forever).

whether or not the circumstances justifying detention *remain* in place",[43] but actually proceeded to carry out this assessment.[44]

19. The Chamber's obligation under article 60(3) did not, however, require fresh determination of the original reasons established for the purpose of article 60(2) in the Initial Detention Decision,[45] as the Chamber found and as the Appeals Chamber has repeatedly confirmed.[46] For the purpose of article 60(3), the Chamber must revert to its findings in the prior determination under article 60(2) and look for any evidence of *change* in circumstances underlying its previous decision. It need not, however, re-examine the original evidence to reach its prior determination anew. The Defence shows no basis to assume that the latter is necessary in order to accomplish the former. Nor is the mere passage of time itself sufficient to establish, *ipso facto*, a change in circumstance for the purpose of article 60(3).[47]

A.3. The Chamber did not err in fact concerning Mr Said's possible support from former comrades

20. The Defence claims that the Chamber erred in fact when it found that there was no material change of circumstances, based on its view (paraphrased in English) that neither the Prosecution nor the OPCV had shown any basis to conclude that Mr Said might be assisted by former comrades to abscond if he returned to CAR territory, or that he has any link with the FPRC or any group in the CAR today.[48] However, this argument does not arise from the Decision, since it again reflects the Defence's misconception about the nature of the analysis required under article 60(3).

21. Specifically, the Chamber made *no determination* about the existence of Mr Said's supporters in CAR territory, because this had already been adjudicated in the Initial Detention Decision,[49] and therefore the Chamber was not obliged to make this determination *ab initio*.[50] The Chamber could not have erred in fact in a determination that it simply did not make.

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[43] Decision, para. 31 (emphasis added). *See also above* paras. 7, 10.
[44] Decision, paras. 32-35.
[45] *Contra* Appeal, paras. 50-51 (calling for new determinations whether Mr Said's links to the FPRC now exist and the weight to be given to Mr Said's assurance that he will appear for trial). The Prosecution further notes that the Chamber's concern was not simply with any formal links to the FPRC as such, but equally with possible links between current or former members of the FPRC including in their private capacity: *see* Initial Detention Decision, paras. 27-28.
[46] Decision, para. 29. *See further above* paras. 7-8.
[47] *See* ICC-01/05-01/13-969 OA5 OA6 OA7 OA8 OA9 ("*Bemba et al.* Interim Release Appeal Judgment"), para. 44. *Contra* Appeal, para. 51.
[48] Appeal, para. 62. *See also* paras. 53-61. On the nature of these links, *see also above* fn. 45.
[49] *See e.g.* Decision, paras. 28, 34.

22. Nor does the Defence show that the Chamber erred in fact in concluding that there was no change of circumstance material to Mr Said's links with current or former members of the FPRC, or other supporters in CAR territory. To the contrary, under this ground of appeal,[51] the Defence takes issue with the manner in which the Prosecution had interpreted the Initial Detention Decision.[52] It asserts that the Prosecution submissions were irrelevant,[53] and states that sources relied upon by the Prosecution failed to establish that Mr Said continued to be linked to the FPRC.[54] Even if the Chamber accepted the Defence arguments,[55] none of this discussion was pertinent to the question whether there had been a material *change* in circumstances. Rather, it reflects the continued Defence efforts to re-litigate the original question concerning the support network potentially available to Mr Said if provisionally released. As such, even if *arguendo* the Chamber had erred in this respect, it could not have materially altered the determination required by article 60(3).

A.4. The Chamber did not err in law by failing to provide adequate reasons for its Decision

23. Based on its own mischaracterisation of the Decision as lacking any foundation in concrete evidence, and relying instead on abstract assumptions and theoretical hypotheses, the Defence claims that this must also mean that the Decision was inadequately reasoned.[56] In particular, it raises the concern that an inadequately reasoned decision on detention would preclude ever showing a material change of circumstances, justifying release, because there would never be a clear standard by which to measure what had changed.[57] However, these concerns are themselves speculative and ill-founded. As explained elsewhere,[58] the Decision was grounded in concrete evidence which reasonably negated the possibility, in the Chamber's view, that there had been a material change of circumstances. In particular, it found that the "tense and volatile" security situation in the CAR and the limited capabilities of the CAR authorities meant that there continued to be no basis to mitigate the previously identified risks of Mr Said absconding or interfering with witnesses. This reasoning is

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[50] *See above* paras. 7-8, 10, 19.
[51] *But see further below* paras. 30-37 (challenging the Chamber's factual assessment on the basis of the report provided by the Registry).
[52] Appeal, para. 55.
[53] Appeal, para. 56.
[54] Appeal, paras. 57-61.
[55] The Decision did not seem to premise any part of its reasoning directly on the Prosecution submissions criticised by the Defence, *see* Decision, paras. 27-35, *especially* para. 30 (finding that "the Prosecution should have made a greater effort to provide substantiated submissions on the matter").
[56] Appeal, paras. 63, 66. *See also* paras. 64-65.
[57] Appeal, para. 66.
[58] *See e.g. above* paras. 2, 11; *below* paras. 38-39.

abundantly clear, and legally sufficient. It suffices both to enable review in these appellate proceedings, and to frame any future further litigation under article 60(3).

24. For all these reasons, the first ground of appeal should be dismissed as it fails to show any error of law or fact.

B. Second ground of appeal: the Chamber did not err in law by maintaining Mr Said's detention notwithstanding its criticism of the Prosecution submissions

25. Given the Chamber's criticism of the degree to which the Prosecution submissions were substantiated,[59] the Defence claims that it erred in law by failing to consider itself obliged to order the release of Mr Said.[60] This argument is based solely on the Defence view that the Prosecution bears a burden of proof for the purpose of article 60(3), and that any failure by the Prosecution must be fatal to the continuation of pre-trial detention.

26. Yet this was not the understanding of the Chamber, which stressed its view that article 60(3) imposes an "independent responsibility" upon it "to assess whether or not the circumstances justifying detention remain in place."[61] Since the Defence presents no argument or authority to challenge this conclusion, this ground of appeal could be dismissed *in limine*.

27. Furthermore, and in any event, the Chamber's interpretation is not only consistent with the express terms of article 60(3)—which places the duty upon *the Chamber* to review its initial ruling on detention—but also the very purpose of the detention review procedure. In this respect, the material concern is not partisan success or failure, but rather verification whether detention continues to be objectively necessary—and in this regard the Chamber should obviously order the appropriate disposition no matter any formal defects in the pleading of either of the parties.

28. Nor does the Defence seem to have objected to the Chamber seeking additional information from the Registrar,[62] even though the only conceivable purpose for that information was to assist the Chamber in its assessment under article 60(3). The Defence fails to show any reason why the Chamber could not properly have been satisfied of the absence of

[59] *See above* para. 11.
[60] Appeal, paras. 67-69.
[61] Decision, para. 31.
[62] *See above* para. 17.

a material change of circumstances on the basis of the Registry report, even if it found the Prosecution to provide less assistance on this occasion.

29. For these reasons, the second ground of appeal should be rejected as it does not show that the Chamber erred in law.

C. Third ground of appeal: the Chamber did not err in law or fact in considering the Registry report

30. The Defence avers that the Chamber made two errors in relying upon the Registry report. First, it contends that the Chamber impermissibly reversed the burden of proof by requiring the Defence to show that the Registry report was false or inaccurate.[63] Second, it suggests that particular statements in the Registry report—notably, those contained in paragraph 15, which referred to [REDACTED]—were not supported by citation, and could not properly be relied upon.[64] However, neither of these arguments shows that the Chamber erred in law or fact in its approach to the report.

31. Firstly, in suggesting that it was subject to some kind of reversed burden of proof, the Defence takes the Chamber's reasoning out of context. The Chamber was careful to recount the Defence criticisms of the Registry methodology, especially its reliance on open source material, and in that context concluded as follows:

> [T]he Chamber notes that the Appeals Chamber has confirmed that, in the context of the review of detention, it is permissible to rely on public sources, such as UN or NGO reports. Moreover, the Chamber observes that, *even though the Defence bears no probative burden in this regard*, it does not claim that any of the information provided in the Registry Report is false or inaccurate. Not does it claim that the security situation inside the CAR has evolved significantly since the Initial Detention Decision. In fact, the Defence expressly acknowledges the ongoing political instability and armed violence but argues that this security situation is unrelated to Mr Said and goes beyond the Court's proceedings.[65]

32. The Defence seems to interpret this passage as meaning that that the Chamber required the Defence to demonstrate positively that claims in the Registry report were false.[66] But this

[63] Appeal, paras. 71-73.
[64] Appeal, paras. 74-78.
[65] Decision, para. 32 (emphasis added).
[66] *See e.g.* Appeal, para. 72. *See also* para. 73.

is inaccurate. To the contrary, the Chamber recognised that the probative value of the Registry report needed to be established, even if to a relatively low standard, and it did this first by noting that the Registry report's reliance on materials such as "press articles, NGO reports and UN reports" was legally sufficient.[67] Only then, as a supplementary matter, did it note that aspects of the report (political instability and armed violence) were in fact compatible with the Defence's own submissions—even though the Defence disagreed as to the legal relevance of this information. The Chamber expressly disclaimed any possibility that the Defence bore any probative burden.

33. Accordingly, far from relying on the Registry report unless it could be disproved by the Defence, the Chamber examined the Registry report in light of the Defence's own submissions, among other considerations, but independently found that it was reliable. While the Defence understanding of the factual situation corroborated this conclusion, this did not amount to reversing the burden of proof in any way.

34. Secondly, the Defence misrepresents the Registry Report when it submits that the Registry provided no source for reporting at paragraph 15 that "[REDACTED]."[68] At paragraph 16, which the Defence fails to consider, the Registry reports the sourced incident of [REDACTED].[69]

35. In any event, even if *arguendo* the Defence was correct in its criticism of the sourcing of paragraph 15 of the Registry report, this does not show that the Chamber erred in fact in concluding that there was no material change of circumstances. It found:

> It does indeed appear clearly from the Registry Report that the security situation inside the CAR continues to be tense and volatile. The CAR authorities also appear to only have limited capacity to apprehend fugitives or protect victims and witnesses. Moreover, according to the Registry Report, there have been reports of high profile detainees being released without trial and even abducted from detention facilities in Bangui.[70]

36. It is thus apparent that the claim which is criticised by the Defence as unsourced [REDACTED] only forms one aspect of the Chamber's overall analysis. Even if this were

[67] Decision, para. 32.
[68] *See* ICC-01/14-01/21-365-Conf-Anx, para. 15 ("Registry Report").
[69] Registry Report, para. 16.
[70] Decision, para. 33.

incorrect, it would not alter the Chamber's conclusion as to the security situation in the CAR, which remains reasonable and indeed uncontested. As such, it would not show any error of fact.

37. For the reasons set out above, the third ground of appeal should be rejected as it does not show that the Chamber erred in law or fact.

D. Fourth ground of appeal: the Chamber did not order Mr Said's continued detention based merely on the general security situation in the Central African Republic

38. Finally, the Defence seeks to claim that the Chamber failed to link the need for Mr Said's continued detention with any specific risks related to him, repeating its criticism of the Chamber's findings (in the Initial Detention Decision) that he would potentially be motivated to abscond or to interfere with witnesses if provisionally released.[71] Again, the Defence repeats its claim that these concerns are merely "theoretical".[72] However, as the Decision makes clear, these risks were identified in the Initial Detention Decision, and nothing in the proceedings leading to the Decision put them in issue.[73] As such, the finding as to the existence of these risks is settled and beyond the scope of these appeal proceedings. This ground of appeal should be dismissed on this basis alone.

39. Yet, in any event, the fact that the analysis in the Decision tended to focus on the general security situation in the CAR does not suggest that the Chamber was not mindful of the need to consider Mr Said's particular circumstances—rather, it merely reflects that this is the key variable (since it relates to the ability of the CAR authorities to supervise Mr Said's provisional release, and to enforce conditions, etc.) which might potentially change and therefore requires monitoring. Notwithstanding the convoluted arguments of the Defence, the Decision is thus simple, straightforward, and reflects the common sense approach that would be expected on matters of this nature. It exhibits no error.

40. For these reasons, the fourth ground of appeal should be rejected as it does not show that the Chamber erred in law.

[71] Appeal, para. 79. *See also above* para. 2.
[72] *See e.g.* Appeal, paras. 79, 81.
[73] *See e.g.* Decision, para. 34 (citing Initial Detention Decision, paras. 34-35).

Conclusion

41. For all these reasons, the Appeal should be dismissed in its entirety, and the Decision should be confirmed.

Karim A.A. Khan Q.C., Prosecutor

Dated this 4th day of August 2022
At The Hague, The Netherlands