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TRIAL CHAMBER VI

Before:

**Judge Miatta Maria Samba, Presiding Judge
Judge María del Socorro Flores Liera
Judge Sergio Gerardo Ugalde Godínez**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF
*THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Public

First review of the detention of Mr Mahamat Said Abdel Kani

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

The Office of the Prosecutor

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Legal Representatives of Victims

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REGISTRY

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Counsel Support Section

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Detention Section

**Victims Participation and
Reparations Section**

Other

TRIAL CHAMBER VI of the International Criminal Court, in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, having regard to articles 21, 58(1), 60(3) and (4), 61(11), 64(6)(a), and 68(1) of the Rome Statute (the ‘Statute’), and rule 118(2) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘First review of the detention of Mr Mahamat Said Abdel Kani’.

I. PROCEDURAL HISTORY

1. On 7 January 2019, Pre-Trial Chamber II (the ‘Pre-Trial Chamber’) issued the ‘Warrant of arrest for Mr Mahamat Said Abdel Kani.’¹
2. On 20 January 2021 Mr Said was arrested² and transferred to the Court’s Detention Centre on 25 January 2021.³
3. On 3 February 2021, the Pre-Trial Chamber issued the ‘Decision on the Prosecution’s Request for Contact Restrictions concerning Mahamat Said Abdel Kani in Pre-Trial Detention’ imposing a number of restrictions in relation to Mr Said’s contacts for a period of a month.⁴ Upon various requests of the Office of the Prosecutor

¹ Pre-Trial Chamber II, [Warrant of Arrest for Mahamat Said Abdel Kani](#), ICC-01/14-01/21-2-US-Exp. A public redacted version was filed on 17 February 2021, ICC-01/14-01/21-2-Red2.

² Registry, ‘Redacted Version of the ‘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. A confidential redacted version of the Request was filed on 19 February 2021, ICC-01/14-01/21-6-Conf-Exp-Red. A corrected version of the confidential redacted version was filed on 24 May 2021, ICC-01/14-01/21-10-Conf-Red2-Corr.

³ Registry, ‘Redacted Version of the ‘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 (first confidential redacted *ex parte* version notified on 19 February 2021 (ICC-01/14-01/21-6-Conf-Exp-Red); second confidential redacted *ex parte* version notified on 18 March 2021 (ICC-01/14-01/21-6-Conf-Exp-Red2).

⁴ Pre-Trial Chamber II, Confidential Redacted Version of ‘Decision on the “Prosecution’s request for Contact Restrictions concerning Mahamat Said Abdel Kani in Pre-trial Detention”’, 3 February 2021, ICC-01/14-01/21-9-US-Exp. A confidential redacted version was filed on 3 February 2021, ICC-01/14-01/21-9-Conf-Red.

(the ‘Prosecution’),⁵ the Pre-Trial Chamber extended the contact restrictions on 5 March 2021,⁶ 5 May 2021,⁷ 5 July 2021⁸ and 3 September 2021.⁹

4. On 9 December 2021, the Pre-Trial Chamber partially confirmed the charges against Mr Said¹⁰ and the case was referred to the Chamber on 14 December 2021.¹¹

5. On 3 March 2022, following a request for interim release by the Defence,¹² the Chamber issued its ‘Decision on the Defence Application for Interim Release of Mahamat Said Abdel Kani’ (the ‘Initial Detention Decision’), rejecting the Defence’s application for interim release.¹³

⁵ See Prosecution’s Request for Extension of Contact Restrictions, 22 February 2021, ICC-01/14-01/21-22-Conf; Prosecution’s Second Request for the Extension of Contact Restrictions, 26 April 2021, ICC-01/14-01/21-61-Conf-Exp (the ‘Prosecution’s Second Request’); Prosecution’s Third Request for the Extension of Contact Restrictions, 25 June 2021, ICC-01/14-01/21-108-Conf-Exp (a confidential redacted version was filed on the same date, ICC-01/14-01/21-108-Conf-Red); Prosecution’s Fourth Request for the Extension of Contact Restrictions, 23 August 2021, ICC-01/14-01/21-148-Conf; *see also* Réponse de la Défense à la « Prosecution’s Request for Extension of Contact Restrictions » (ICC-01/14-01/21-22-conf), déposée le 22 février 2021’, 5 March 2021, ICC-01/14-01/21-29-Conf; Réponse de la Défense à la « Prosecution’s Second Request for the Extension of Contact Restrictions », 29 April 2021, ICC-01/14-01/21-65-Conf; ‘Réponse de la Défense à la « Prosecution’s Third Request for the Extension of Contact Restrictions » dated 25 June 2021 » (ICC-01/14-01/21-108-Conf-Red)’, 30 June 2021, ICC-01/14-01/21-113-Conf.

⁶ Pre-Trial Chamber II, Decision on the ‘Prosecutions Request for Extension of Contact Restrictions’, 5 March 2021 ICC-01/14-01/21-31-Conf. The Pre-Trial Chamber also modified some of the contact restrictions in place, *see* para 34.

⁷ Pre-Trial Chamber II, ‘Decision on the “Prosecution’s Second Request for the Extension of Contact Restrictions”’, 5 May 2021, ICC-01/14-01/21-69-Conf. The Pre-Trial Chamber also modified some of the contact restrictions in place, *see* para 33.

⁸ Pre-Trial Chamber II, ‘Decision on the Prosecution’s third request for extension of contact restrictions’, 5 July 2021, ICC-01/14-01/21-116-Conf. The Pre-Trial Chamber also modified some of the contact restrictions in place, *see* paras 33, 35.

⁹ Pre-Trial Chamber II, ‘Decision on the Prosecution’s fourth request for extension of contact restrictions’ 3 September 2021, ICC-01/14-01/21-159-Conf.

¹⁰ Pre-Trial Chamber II, [Decision on the confirmation of charges against Mahamat Said Abdel Kani](#), 9 December 2021, ICC-01/14-01/21-218-Red.

¹¹ Presidency, [Decision constituting Trial Chamber VI and referring to it the case of *The Prosecutor v Mahamat Said Abdel Kani*](#), 14 December 2021, ICC-01/14-01/21-220.

¹² [Demande de mise en liberté provisoire de Mahamat Said Abdel Kani](#), 25 January 2022, ICC-01/14-01/21-233-Conf. A public redacted version was filed on 27 January 2022, ICC-01/14-01/21-233-Red.

¹³ [Decision on the Defence Application for Interim Release of Mahamat Said Abdel Kani and Contact Restrictions](#), ICC-01/14-01/21-247-Conf. A public redacted version was filed on the same day, ICC-01/14-01/21-247-Red.

6. On 14 March 2022, the Defence filed a list of immediate family members with whom Mr Said wishes to be in regular contact.¹⁴
7. On 17 May 2022, pursuant to Article 60(3) of the Statute and Rule 118(2) of the Rules, the Chamber instructed the Prosecution and the Office of Public Counsel for Victims (the ‘OPCV’) to submit observations regarding the review of Mr Said’s detention by 30 May 2022 and gave the Defence until 10 June 2022 to respond.¹⁵
8. On 19 May 2022, the Appeals Chamber issued its ‘Judgment on the appeal of Mr Mahamat Said Abdel Kani against the decision of Trial Chamber VI entitled “Decision on the Defence Application for Interim Release of Mahamat Said Abdel Kani and Contact Restrictions”’, in which it confirmed the Initial Detention Decision.¹⁶
9. On 30 May 2022, the Prosecution¹⁷ and the OPCV¹⁸ submitted their observations on the matter of detention.
10. On 10 June 2022, the Defence submitted its response to both the Prosecution’s and OPCV’s observations (the ‘Defence Response’).¹⁹ On the same day, the Defence also filed a request asking the Chamber to order the Registry to implement the regime on contact restrictions ordered by the Chamber in the Initial Detention Decision (the ‘Defence Request’).²⁰

¹⁴ [Communication conformément au paragraphe 46 de la décision ICC-01/14-01/21-247-Red de la liste des membres de la famille de Monsieur Said \(List of Family Names\) avec lesquels il souhaite être en contact régulier dans le cadre des appels téléphoniques](#), ICC-01/14-01/21-257.

¹⁵ E-mail by the Chamber on 17 May 2022, at 13:09.

¹⁶ [Judgment on the appeal of Mr Mahamat Said Abdel Kani against the decision of Trial Chamber VI entitled “Decision on the Defence Application for Interim Release of Mahamat Said Abdel Kani and Contact Restrictions”](#), 19 May 2022, ICC-01/14-01/21-318.

¹⁷ [Prosecution’s observations on the review of detention of Mr Mahamat Said Abdel Kani](#), 30 May 2022, ICC-01/14-01/21-335 (the ‘Prosecutor’s Observations’).

¹⁸ [Victims’ observations on the review of Mr Said’s Detention](#), 30 May 2022, ICC-01/14-01/21-336 (the ‘Victims’ Observations’).

¹⁹ Réponse de la Défense aux « Prosecution’s observations on the review of detention of Mr Mahamat Said Abdel Kani » (ICC-01/14-01/21-335) et aux « Victims’ observations on the review of Mr Said’s Detention » (ICC-01/14-01/21-336), 10 June 2022, ICC-01/14-01/21-353-Conf-Exp. A confidential redacted version was filed the same day, ICC-01/14-01/21-353-Conf-Red.

²⁰ Demande de la Défense visant à obtenir la mise en œuvre de la décision de la Chambre du 3 mars 2022 (ICC-01/14-01/21-247-Conf) afin que le droit à la vie privée et familiale de Monsieur Said, présumé innocent, soit respecté lors de sa détention, ICC-01/14-01/21-350-Conf-Exp.

11. On 17 June 2022, pursuant to an instruction from the Chamber,²¹ the Registry submitted a Brief Report on the Security Situation in the Central African Republic (the ‘Registry Report’).²² On the Same day, the Registry also filed its observations on the Defence Request (the ‘Registry Observations’).²³

12. On 21 June 2022, the OPCV indicated via email that it would not submit observations on the Registry Report.²⁴ The Prosecution indicated the same on the following day.²⁵

13. On 24 June 2022, the Defence filed its observations on the Registry Report (the ‘Defence Observations’).²⁶

II. SUBMISSIONS

A. The Prosecutor’s Observations

14. The Prosecution argues that no change in circumstances justifying the modification of Mr Said’s detention has occurred and accordingly Mr Said’s ‘continued detention remains necessary as the conditions warranting his detention under articles 58(1)(b)(i) and (ii) of the Rome Statute [...] continue to be met’.²⁷

15. First, the Prosecution submits that, in accordance with article 58(1)(b)(i) of the Statute, Mr Said’s continued detention remains necessary to ensure his appearance at trial, since each of the factors listed by the Chamber in the First Detention Decision continue to apply. The Prosecution also refers to recent media coverage according to which ‘the [*Front Populaire pour la Renaissance de la Centrafrique*, (the ‘FPRC’)] and

²¹ Email from Trial Chamber VI, dated 15 June 2022 at 13:12.

²² ICC-01/14/01/21-365-Conf-Anx.

²³ Registry Observations on the “Demande de la Défense visant à obtenir la mise en oeuvre de la décision de la Chambre du 3 mars 2022 (ICC-01/14-01/21-247-Conf) afin que le droit à la vie privée et familiale de Monsieur Said, présumé innocent, soit respecté lors de sa détention“, (ICC-01/14-01/21-350-Conf-Exp), ICC-01/14-01/21-366-Conf-Exp.

²⁴ Email from Ms Sarah Pellet, dated 21 June 2022 at 09:04.

²⁵ Email from Ms Leonie von Braun, dated 22 June 2022 at 20:27.

²⁶ Observations de la Défense portant sur le rapport « on the Security Situation in the Central African Republic » (ICC-01/14-01/21-365-Conf) déposé par le Greffe le 17 juin 2022, ICC-01/14-01/21-373-Conf.

²⁷ [Prosecutor’s Observations](#), para. 2.

its off-shoot rebel groups and partner groups continue to engage in armed hostilities’.²⁸ Furthermore, the Prosecution contends that the proximity of the trial’s starting date only increases the risk of Mr Said absconding as the ‘knowledge of the risk of incurring a lengthy sentence may motivate the Accused to abscond if given the opportunity’.²⁹

16. Second, the Prosecution submits that Mr Said’s continued detention remains necessary under article 58(1)(b)(ii), to ensure that he does not obstruct or endanger the proceedings. Although the Prosecution’s investigation is nearing its end, the Prosecutor asserts that this risk remains present as ‘Mr Said currently knows the identity of the vast majority of the witnesses, including those who will testify in court’.³⁰ The Prosecution points to Mr Said’s apparent continuous influence over and support in the Central African Republic (the ‘CAR’) to argue that the risk of him or his supporters ‘exerting pressure on witnesses to change their testimony, either directly or indirectly, if he were released, remains high’.³¹

17. Lastly, the Prosecution submits that Mr Said ‘has not been detained for an unreasonable amount of time due to inexcusable delay of the Prosecution’ as ‘the Prosecution has met all deadlines set by the Chamber to prepare its case in an expeditious manner and will continue to do so’.³²

B. The Victim’s Observations

18. The OPCV submits that Mr Said’s detention should be maintained, since the conditions of Article 58(1)(b)(i) and (ii) of the Statute continue to be met. According to the OPCV, ‘there is not the slightest indication that a change has occurred in the circumstances underpinning the Chamber’s Decision, [...] nor that there are any new circumstances requiring a modification of the Decision’.³³ The OPCV argues that Mr Said’s progressive access to information regarding victims and witnesses ‘militates

²⁸ [Prosecutor’s Observations](#), para. 6.

²⁹ [Prosecutor’s Observations](#), para. 7.

³⁰ [Prosecutor’s Observations](#), para. 8.

³¹ [Prosecutor’s Observations](#), para. 9.

³² [Prosecutor’s Observations](#), para. 10.

³³ [Victims’ Observations](#), para. 16.

in favour of his continued detention'.³⁴ The OPCV further stresses that due to the unstable security situation in the CAR, victims indicate they live in permanent fear, as a result of which they indicate the need for Mr Said to remain in detention.³⁵

C. The Defence's Response

19. The Defence argues that the Prosecution has failed to present new, specific and substantiated arguments demonstrating that the requirements of article 58(1)(b) continue to be met.³⁶ In particular, the Defence claims that the Prosecution is not entitled to simply rely on old evidence or the Chamber's past findings but that it was incumbent upon the Prosecution to present new evidence showing that the conditions justifying detention still exist.³⁷

20. In relation to article 58(1)(b)(i), the Defence submits that the risk of Mr Said absconding does not exist at present. The Defence refers to Mr Said's cooperative and respectful demeanour towards the Court and recalls his written commitments appended to its first request for interim release.³⁸ The Defence also expresses its disagreement with the Chamber's 'hypothetical' conclusion in the Initial Detention Decision that there is a risk that Mr Said can still count on support from the FPRC.³⁹ The Defence further submits that the Prosecution has not presented any concrete evidence to establish the current existence of such support.⁴⁰ In particular, it contests the relevance and probative value of the press articles that were invoked by the Prosecution.⁴¹ and criticises the invocation of the political and security situation in the CAR, arguing that this is not relevant to a discussion on the legal requirements of article 58(1) of the Statute.⁴²

³⁴ [Victims' Observations](#), para. 17.

³⁵ [Victims' Observations](#), para. 19.

³⁶ Defence Response, paras 13-15.

³⁷ Defence Response, paras 7-12, 16-18.

³⁸ Defence Response, para. 20. *See* ICC-01/14-01/21-233-Conf-AnxA.

³⁹ Defence Response, paras 25-31.

⁴⁰ Defence Response, para 32.

⁴¹ Defence Response, paras 33-38.

⁴² Defence Response, para. 35.

21. In relation to article 58(1)(b)(ii), the Defence denies that Mr Said's provisional release might endanger or obstruct the proceedings. In particular, the Defence argues that the Registry report of 22 January 2022,⁴³ stating that the FPRC is considered a potential threat actor to ICC witnesses, cannot constitute a basis for any new decision on Mr Said's detention if there is no additional evidence to support that the assertions contained therein are still valid today.⁴⁴ The Defence submits that the Prosecution has not presented any new and concrete elements establishing a potential risk to its witnesses.⁴⁵ It also dismisses the OPCV's arguments regarding Mr Said's access to confidential information, pointing to the extensive redactions made in the victim applications.⁴⁶ In response to the victims' proclamations of permanent fear, the Defence submits that such fears cannot form the basis for Mr Said's continued detention due to their generic and subjective character.⁴⁷

III. APPLICABLE LAW

22. Pursuant to article 60(3) of the Statute, the Chamber shall periodically review its initial decision on release or detention rendered following a request for interim release under article 60(2) of the Statute.⁴⁸ Rule 118(2) of the Rules requires the Chamber to do so at least every 120 days.

23. In conducting a review under article 60(3) of the Statute, the Chamber may modify its initial decision on release or detention 'if it is satisfied that changed circumstances so require'. As consistently held by the Appeals Chamber, "changed circumstances" comprise 'either a change in some or all of the facts underlying a

⁴³ Annex to Registry Report on the Implementation of the Restrictions on Contact Ordered by Trial Chamber VI, 24 January 2022, ICC-01/14-01/21-232-Conf-Exp-Anx.

⁴⁴ Defence Response, para. 44.

⁴⁵ Defence Response, para. 46.

⁴⁶ Defence Response, para. 47. *See also* Réponse de la Défense au « First Registry Transmission of Groups A and Group C Victims Applications for Participation in Trial Proceedings » (ICC-01/10-01/21-296), 19 May 2022, ICC-01/14-01/21-316-Conf.

⁴⁷ Defence Response, para. 50.

⁴⁸ Article 60(3) of the Statute; [Initial Detention Decision](#), para. 40. *See also* Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, 'Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled "Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo"', 13 February 2007, paras 3, 15, 94; Appeals Chamber, *The Prosecutor v. Laurent Gbagbo*, [Judgment on the appeal of Mr Laurent Gbagbo against the decision of Pre-Trial Chamber I of 11 July 2013 entitled "Third decision on the review of Laurent Gbagbo's detention pursuant to article 60\(3\) of the Rome Statute"](#), 29 October 2013, ICC-02/11-01/11-548-Red, para. 40.

previous decision on detention, or a new fact satisfying a Chamber that a modification of its prior ruling is necessary'.⁴⁹

24. Accordingly, the Appeals Chamber established 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*'.⁵⁰ Rather, the Chamber must revert 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 changed circumstances, it must 'consider their impact on the factors that formed the basis for the decision to keep the person in detention'.⁵¹

⁴⁹ Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Judgment on the appeal of the Prosecutor against Pre-Trial Chamber II's "Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa"](#), 2 December 2009, ICC-01/05-01/08-631-Red, paras 1, 60; Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 28 July 2020 entitled "Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo Pursuant to Rule 118\(2\) of the Rules of Procedure and Evidence"](#), 19 November 2010, ICC-01/05-01/08-1019, para. 51; Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 27 June 2011 entitled "Decision on Applications for Provisional Release"](#), 19 August 2011, ICC-01/05-01/08-1626-Red, para. 71; Appeals Chamber, *The Prosecutor v. Laurent Gbagbo*, [Judgment on the appeal of Mr Laurent Gbagbo against the decision of Pre-Trial Chamber I of 11 July 2013 entitled "Third Decision on the review of Laurent Gbagbo's detention pursuant to article 60\(3\) of the Rome Statute"](#), 29 October 2013, ICC-02/11-01/11-548-Red, para. 40; Appeals Chamber, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, [Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 10 March 2017 entitled "Decision on Mr Gbagbo's Detention"](#), 19 July 2017, ICC-02/11-01/15-992-Red, para. 39.

⁵⁰ Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 28 July 2020 entitled "Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo Pursuant to Rule 118\(2\) of the Rules of Procedure and Evidence"](#), 19 November 2010, ICC-01/05-01/08-1019, para. 53. *See also* Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 27 June 2011 entitled "Decision on Applications for Provisional Release"](#), 19 August 2011, ICC-01/05-01/08-1626-Red, para. 39; Appeals Chamber, *The Prosecutor v. Laurent Gbagbo*, [Judgment on the appeal of Mr Laurent Gbagbo against the decision of Pre-Trial Chamber I of 11 July 2013 entitled "Third decision on the review of Laurent Gbagbo's detention pursuant to article 60\(3\) of the Rome Statute"](#), 29 October 2013, ICC-02/11-01/11-548-Red, para. 41.

⁵¹ Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 6 January 2012 entitled "Decision on the defence's 28 December 2011 'Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo'"](#), 5 March 2012, ICC-01/05-01/08-2151-Red, para. 1, 31. *See also* Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 28 July 2020 entitled "Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo Pursuant to Rule 118\(2\) of the Rules of Procedure and Evidence"](#), 19 November 2010, ICC-01/05-01/08-1019, para. 52; Appeals Chamber, *The Prosecutor v. Jean-Pierre*

25. Changed circumstances cannot be hypothetical or conditional, but must be demonstrated on a concrete basis.⁵² When assessing whether there is a change in circumstances, the Chamber should not only weigh the Prosecution’s submissions against those of the detained person, it ‘must also consider any other information which has a bearing on the matter’.⁵³ Indeed, the Chamber’s assessment under article 60(3) constitutes ‘a review of the current circumstances as a whole which underpin detention’.⁵⁴

26. However, the Chamber is not expected ‘to enter findings on the circumstances already decided upon’,⁵⁵ or ‘entertain submissions by the detained person that merely

Bemba Gombo, [Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 27 June 2011 entitled “Decision on Applications for Provisional Release”, ICC-01/05-01/08-1626-Red](#), 19 August 2011, para. 71; Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 2 September 2011 entitled “Decision on the ‘Demande de mise en liberté de M. Jean-Pierre Bemba Gombo afin d’accomplir ses devoirs civiques en République Démocratique du Congo”](#), 9 September 2011, ICC-01/05-01/08-1722, para. 30; Appeals Chamber, *The Prosecutor v. Laurent Koudou Gbagbo*, [Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I of 13 July 2012 entitled “Decision on the ‘Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo”](#), 26 October 2012, ICC-02/11-01/11-278-Red, para. 23; Appeals Chamber, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, [Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 10 March 2017 entitled “Decision on Mr Gbagbo’s Detention”](#), 19 July 2017, ICC-02/11-01/15-992-Red, para. 39.

⁵² Trial Chamber, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, [Decision on the Second Yekatom Defence Motion for Interim Release](#), 7 September 2020, ICC-01/14-01/18-643-Red, para. 16.

⁵³ Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 28 July 2010 entitled “Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118\(2\) of the Rules of Procedure and Evidence”](#), 19 November 2010, ICC-01/05-01/08-1019, para. 52. *See also* Trial Chamber, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, [Decision on the Second Yekatom Defence Motion for Interim Release](#), 7 September 2020, ICC-01/14-01/18-643-Red, para. 16 *citing* Pre-Trial Chamber, *The Prosecutor v. Callixte Mbarushimana*, [Review of Detention and Decision on the “Third Defence request for interim release”](#), 16 September 2011, ICC-01/04-01/10-428, para. 36.

⁵⁴ Appeals Chamber, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, [Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 10 March 2017 entitled “Decision on Mr Gbagbo’s Detention”](#), 19 July 2017, ICC-02/11-01/15-992-Red, para. 38.

⁵⁵ Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 28 July 2010 entitled “Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118\(2\) of the Rules of Procedure and Evidence”](#), 19 November 2010, ICC-01/05-01/08-1019, para. 53; Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 27 June 2011 entitled “Decision on Applications for Provisional Release”](#), 19 August 2011, ICC-01/05-01/08-1626-Red, para. 60; Appeals Chamber, *The Prosecutor v. Laurent Gbagbo*, [Judgment on the appeal of Mr Laurent Gbagbo against the decision of Pre-Trial Chamber I of 11 July 2013 entitled “Third decision on the review of Laurent Gbagbo’s detention pursuant to article 60\(3\) of the Rome Statute”](#), 29 October 2013, ICC-02/11-01/11-548-Red, para. 52.

repeat arguments that the Chamber has already addressed'.⁵⁶ The emphasis of the review is whether there has been a change in any of the circumstances, and the Chamber must therefore only determine whether the circumstances identified in its previous ruling still exist.⁵⁷ The Chamber is not required to further review the decision on release or detention if it is unable to identify any changed circumstances.⁵⁸

IV. ANALYSIS

A. Review of detention

27. Before analysing whether or not there are changed circumstances that warrant amending the Initial Detention Decision, the Chamber will first address two specific points raised by the Defence.

28. First, as 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 relitigating issues that were already decided by the Chamber in the Initial Detention Decision and confirmed on appeal. The Chamber will therefore not consider these arguments further.

29. Second, in relation to the Defence's argument concerning the burden on the Prosecution to demonstrate, with fresh evidence, that the conditions justifying detention

⁵⁶ Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 28 July 2010 entitled "Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118\(2\) of the Rules of Procedure and Evidence"](#), 19 November 2010, ICC-01/05-01/08-1019, para. 53; Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 27 June 2011 entitled "Decision on Applications for Provisional Release"](#), 19 August 2011, ICC-01/05-01/08-1626-Red, para. 60.

⁵⁷ Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 28 July 2010 entitled "Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118\(2\) of the Rules of Procedure and Evidence"](#), 19 November 2010, ICC-01/05-01/08-1019, para. 53. *See also* *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 10 March 2017 entitled "Decision on Mr Gbagbo's Detention", 19 July 2017, ICC-02/11-01/15-992-Red, paras 38-39.

⁵⁸ Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 6 January 2012 entitled "Decision on the defence's 28 December 2011 'Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo'"](#), 5 March 2012, ICC-01/05-01/08-2151-Red, paras 1, 31.

still exist, the Chamber refers to the applicable law as set out above. It is clear from this that the Chamber's task is limited to determining whether the circumstances identified in its previous ruling still exist.⁵⁹ In other words, the evaluation is not starting from a blank slate and there is no need to relitigate all arguments anew. If 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.

30. Nevertheless, the Defence is correct in saying that it is insufficient for the Prosecution to simply make a blanket claim that nothing has changed. Even though this may well be factually true, and the Chamber will make an independent assessment in this regard below, the mere affirmation by the Prosecution is not enough to establish it. The Chamber therefore finds that the Prosecution should have made a greater effort to provide substantiated submissions on the matter.

31. The Chamber notes that the review of its prior ruling on detention is not entirely dependent upon the parties' submissions and that it has an independent responsibility to assess whether or not the circumstances justifying detention remain in place. To that end, the Chamber instructed the Registry to provide an independent assessment of the security situation inside the CAR.⁶⁰

32. Turning to the situation at hand, the Chamber will assess whether the Registry Report contains any information suggesting that the circumstances have significantly changed. The Defence complains that the Registry made no effort to independently verify the situation in the CAR and that the Registry Report is based entirely on public sources, such as press articles, NGO reports and UN reports, which, the Defence argues, by definition have low probative value.⁶¹ According to the Defence, this leads to the risk that caricatural political theories and unfounded rumours could be adopted as

⁵⁹ Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 28 July 2010 entitled "Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118\(2\) of the Rules of Procedure and Evidence"](#), 19 November 2010, ICC-01/05-01/08-1019, para. 53. *See also The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, [Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 10 March 2017 entitled "Decision on Mr Gbagbo's Detention"](#), 19 July 2017, ICC-02/11-01/15-992-Red, paras 38-39.

⁶⁰ Email from Trial Chamber VI, dated 15 June 2022 at 13:12.

⁶¹ Defence Observations, paras 17-21.

facts.⁶² However, the 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.⁶³ 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. Nor 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 violence⁶⁴ but argues that this security situation is unrelated to Mr Said and goes beyond the Court's proceedings.⁶⁵

33. 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.

34. Based on all the information available to it, the Chamber considers that the risk of Mr Said absconding if he were released to the territory of the CAR remains high.⁶⁶ The Chamber also observes that it has a duty to guarantee the safety and security of the witnesses and victims in this case. Nothing in the information before the Chamber

⁶² Defence Observations, para. 22.

⁶³ Appeals Chamber, *The Prosecutor v. Bosco Ntaganda*, [Judgment on the appeal of Mr Bosco Ntaganda against the decision of Pre-Trial Chamber II of 18 November 2013 entitled "Decision on the Defence's Application for Interim Release"](#), 5 March 2014, ICC-01/04-02/06-271-Red, para. 36; Appeals Chamber, *The Prosecutor v. Laurent Gbagbo*, [Judgment on the appeal of Mr Laurent Gbagbo against the decision of Pre-Trial Chamber I of 11 July 2013 entitled "Third decision on the review of Laurent Gbagbo's detention pursuant to article 60\(3\) of the Rome Statute"](#), 29 October 2013, ICC-02/11-01/11-548-Red, paras 69-70.

⁶⁴ Defence Response, para. 35; Defence Observations, para. 24.

⁶⁵ Defence Observations, para. 24.

⁶⁶ As has been constantly held, 'the question revolves around the possibility, not the inevitability, of a future occurrence.' See, e.g., Appeals Chamber, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, [Judgment in the Appeal by Mathieu Ngudjolo Chui of 27 March 2008 against the Decision of Pre-Trial Chamber I on the Application of the Appellant for Interim Release](#), 9 June 2008, ICC-01/04-01/07-572, para. 21; Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Judgment on the appeal of Mr. Jean-Pierre Bemba Gombo against the decision of Pre-Trial Chamber III entitled "Decision on application for interim release"](#), 16 December 2008, ICC-01/05-01/08-323, para. 55.

suggests that the Chamber's findings from the Initial Detention Decision in this regard are no longer valid. On the contrary, given the current security situation and the limited capacity of the CAR authorities, there would still be little to prevent Mr Said (or others on his behalf) from harming or intimidating witnesses and there is nothing to suggest that Mr. Said's motives for attempting to influence the Prosecution's witnesses have waned.⁶⁷

35. In short, the Chamber finds that there are no changed circumstances that require it to amend its Initial Detention Decision.

B. Defence Request regarding contact restrictions

36. In the Defence Request, the Defence asks the Chamber to order the Registry to implement, as soon as possible, the regime of contact restrictions put in place by the Chamber in the Initial Detention Decision in order to allow Mr Said to exercise his right to maintain a normal private and family life from the ICC Detention Centre.⁶⁸

37. The Chamber understands from the Registry Observations that the process of vetting persons to be included in the monitored and unmonitored contact lists is time-consuming but that it is in progress and at an advanced stage. While it would be desirable for the verification process to move faster, the Chamber acknowledges that the Initial Detention Decision required the Registry to set up novel procedures, which evidently takes time. Moreover, the Chamber is cognisant of the fact that many of the persons the Registry must assess reside in the CAR, which in turn complicates matters.

38. In sum, the Chamber does not consider that the Registry has been dilatory in implementing the Initial Detention Decision and, accordingly, sees no reason to issue a new order to the Registry. Nevertheless, the Chamber urges the Registry to prioritise the review of Mr Said's young children for inclusion on the unmonitored list so that, in the event that they can be included, he may maintain more regular contact with them.

⁶⁷ Initial Detention Decision, paras 34-35.

⁶⁸ Defence Request.

FOR THESE REASONS, THE CHAMBER HEREBY

REMANDS Mr Said in detention; and

REJECTS the Defence Request.

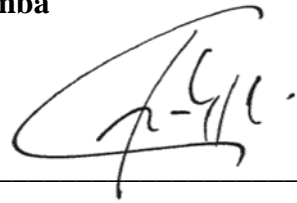


Judge Miatta Maria Samba

Presiding Judge



Judge María del Socorro Flores Liera



Judge Sergio Gerardo Ugalde Godínez

Done in both English and French, the English version being authoritative.

Dated 29 June 2022

At The Hague, The Netherlands