

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/14-01/21

Date: 7 May 2021

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

Confidential

Order to conduct French and Sango language proficiency assessments of Mahamat
Said Abdel Kani

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Eric MacDonald

Counsel for the Defence

Ms Jennifer Naouri
Mr Dov Jacobs

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Language Services Section
Mr Diederick Zanen

JUDGE ROSARIO SALVATORE AITALA, acting as Single Judge on behalf of Pre-Trial Chamber II of the International Criminal Court (the ‘Chamber’ and the ‘Court’), issues this Order to conduct French and Sango language proficiency assessments of Mr Mahamat Said Abdel Kani (‘Mr Said’).

PROCEDURAL HISTORY

1. On 7 January 2019, Judge Rosario Salvatore Aitala, acting as Single Judge on behalf of the Chamber, issued a warrant of arrest against Mr Said.¹
2. On 24 January 2021, Mr Said was surrendered to the Court and arrived at the Court’s Detention Centre on 25 January 2021.²
3. On 25 January 2021, Judge Rosario Salvatore Aitala was designated by the Chamber as Single Judge responsible for carrying out the functions of the Chamber in the present case until otherwise decided.³
4. On 29 January 2021, in accordance with the Single Judge’s decision dated 26 January 2021⁴ and his further instructions dated 28 January 2021,⁵ Mr Said appeared before the Single Judge pursuant to article 60(1) of the Rome Statute (the ‘Statute’) and rule 121(1) of the Rules of Procedure and Evidence (the ‘Rules’). During that initial hearing, Mr Said indicated that he can speak ‘Sango very well’ when asked which languages he fully understands.⁶ The confirmation of charges hearing is scheduled to commence on 5 October 2021.⁷

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

² 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 (confidential redacted, *ex parte* (only available to the Registry, the Office of the Prosecutor and the Defence) version filed on 19 February 2021 (ICC-01/14-01/21-6-Conf-Exp-Red); confidential, lesser redacted, *ex parte* (only available to the Registry, the Office of the Prosecutor and the Defence) version filed on 18 March 2021 (ICC-01/14-01/21-6-Conf-Exp-Red2)).

³ [Decision on the designation of a Single Judge](#), ICC-01/14-01/21-3.

⁴ [Decision on the convening of a hearing for the initial appearance of Mr Mahamat Said Abdel Kani](#), ICC-01/14-01/21-4.

⁵ [Transcript of 28 January 2021](#), ICC-01/14-01/21-T-001-ENG, p. 4, line 20 to p. 5, line 4.

⁶ [Transcript of 29 January 2021](#), ICC-01/14-01/21-T-002-ENG, p. 10, lines 7-9. See also [Transcript of 28 January 2021](#), ICC-01/14-01/21-T-001-ENG, p. 4, lines 23, to p. 5, line 1.

⁷ [Transcript of 29 January 2021](#), ICC-01/14-01/21-T-002-ENG, p. 11, lines 11-12.

5. On 17 March 2021, following the recomposition of the Chambers by the Presidency,⁸ Judge Rosario Salvatore Aitala was designated by the Chamber as Single Judge responsible for carrying out the functions of the Chamber in the present case until otherwise decided.⁹

6. On 31 March 2021, the Single Judge received the 'Information conjointe portant sur l'accord entre l'Accusation et la Défense concernant la langue dans laquelle seront divulgués les éléments de preuve à charge et les déclarations de témoins' (the 'Joint Information').¹⁰

7. On 7 April 2021, the Single Judge issued the 'Order on disclosure and related matters'.¹¹

8. On the same day, upon instruction by the Single Judge,¹² the Office of the Prosecutor (the 'Prosecution') filed the 'Prosecution's Agreement with Defence submission ICC-01/14-01/21-49-Conf' (the 'Prosecution's Agreement').¹³

9. On 23 April 2021, the Single Judge issued the 'Decision on matters related to translation' in which the Single Judge, *inter alia*, ordered the Prosecution to make the statements of the Prosecution's witnesses available in Sango and that the document containing the charges should be translated into Sango (the 'Translation Decision').¹⁴

10. On 3 May 2021, the Single Judge received the 'Demande de reconsidération ou, subsidiairement, demande d'autorisation d'interjeter appel de la « Decision on matters related to translation» (ICC-01/14-01/21-58-Conf)' (the 'Defence's Request').¹⁵

⁸ [Decision assigning judges to divisions and recomposing Chambers](#), 16 March 2021, ICC-01/14-01/21-40.

⁹ [Decision on the designation of a Single Judge](#), ICC-01/14-01/21-42.

¹⁰ ICC-01/14-01/21-49-Conf.

¹¹ ICC-01/14-01/21-50-Conf, para. 29, p. 20.

¹² Email from the Single Judge, at 13:51 hours.

¹³ ICC-01/14-01/21-51-Conf.

¹⁴ ICC-01/14-01/21-58-Conf, p. 10.

¹⁵ ICC-01/14-01/21-68-Conf (corrigendum dated 3 May 2021 and filed on 4 May 2021 (ICC-01/14-01/21-68-Conf-Corr)).

11. On 6 May 2021, upon instruction by the Single Judge,¹⁶ the Prosecution submitted the 'Prosecution Response to Defence Request for Reconsideration or Alternatively Application for Leave to Appeal the Decision on Matters Related to Translation' (the 'Prosecution's Response').¹⁷

SUBMISSIONS RECEIVED BY THE SINGLE JUDGE

A. The Defence's Request

12. The Defence submits that while Mr Said understands and speaks perfectly Sango, he understands written documents in French. In support of its contention, the Defence submits additional information and seeks reconsideration of the Translation Decision. In this regard, the Defence requests the Single Judge to: (i) declare that the language that Mr Said fully understands and speaks is Sango; (ii) declare that the language, which Mr Said understands in written form, is French; and (iii) order that the witness statements, the document containing the charges and other important procedural documents be communicated to Mr Said in French.

13. Alternatively, the Defence requests leave to appeal the Translation Decision on the ground that the Single Judge erred in fact when assessing Mr Said's understanding of written Sango documents.

B. The Prosecution's Response

14. The Prosecution submits that it supports the Defence's Request. The Prosecution avers that Mr Said understands oral and written French and that indeed his 'first language' when reading is French, not Sango. Accordingly, the Prosecution avers that the ordered translations of the Prosecution witnesses' statements and the Document containing the charges in Sango 'are not necessary'.

15. Alternatively, the Prosecution requests the Single Judge 'to order an independent language assessment of Mr SAID's understanding of both written and oral French' (the 'Prosecution's Request').

¹⁶ Email from the Single Judge, 4 May 2021, at 17:30.

¹⁷ ICC-01/14-01/21-71-Conf, with three confidential annexes.

DETERMINATION BY THE SINGLE JUDGE

16. The Single Judge notes article 67(1)(a) and (f) of the Statute and rule 76(3) of the Rules, regulation 28 of the Regulations of the Court.

17. At the outset, the Single Judge notes that the Defence's Request differs in substance to the Joint Information, insofar as the Defence now submits that Mr Said does not understand written Sango but only written French, whereas the Joint Information was phrased to indicate Mr Said's *willingness* to receive the core documents in French in order to increase the efficiency and expeditiousness of the proceedings. The Single Judge stresses that the Defence is required to present all information it considers relevant to the Single Judge's consideration in its initial filing.

18. In light of this new information and noting the Prosecutor's Request, the Single Judge deems it necessary that, in order to determine whether Mr Said fully understands French and/or Sango within the meaning of article 67(1)(a) of the Statute and rule 76(3) of the Rules, the Registry's Language Services Section assesses the oral and written French and Sango language proficiency of Mr Said before determining the Defence's Request. For the French language assessment, Mr Said shall, at least, read one (or more) witness statement(s) in French and the Registry's Language Services Section shall subsequently assess his comprehension of the statement(s), with the assistance of a Sango interpreter, if necessary. The Single Judge leaves it to the Registry's Language Services Section to determine how the remainder of the language assessments shall be conducted.

19. Furthermore, noting the parties' submissions that Sango is primarily a spoken language, the Single Judge instructs the Registry (in consultation with the Prosecution, if necessary) to provide additional information on the feasibility of translating written documents into Sango, including as to whether alternative possibilities are available, such as providing translations by means of Sango audio recordings of the translated core documents.

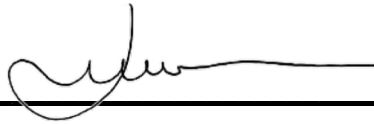
20. Considering that Mr Said's language proficiency may have an impact on the disclosure obligations of the parties and the disclosure calendar, the Single Judge is of the view that the matter must be resolved as soon as possible. Hence, the Single Judge orders the Registry to submit a single report on the results of the language proficiency assessments and the feasibility of translating written documents in Sango by no later

than Wednesday, 19 May 2021, at 16:00 hours. Furthermore, the Single Judge instructs the parties to file their responses to the Registry's report, if any, by no later than Friday, 21 May, at 16:00 hours.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

- a) **ORDERS** the Registry's Language Services Section to conduct assessments as to the oral and written French and Sango language proficiency of Mr Said;
- b) **ORDERS** the Registry (in consultation with the Prosecution, if necessary) to provide additional information on the feasibility of translating written documents into Sango and other possible means to provide such translations;
- c) **ORDERS** the Registry to submit a report to the Chamber on the above matters by no later than Wednesday, 19 May 2021, at 16:00 hours;
- d) **ORDERS** the Prosecution and the Defence to respond to the Registry's report by no later than Friday, 21 May 2021, at 16:00 hours;
- e) **ORDERS** Mr Said to cooperate with the Registry in conducting said assessments; and
- f) **ORDERS** the Defence and the Prosecution to indicate whether the Joint Information, the Prosecution's Agreement, the Defence's Request, and the Prosecution's Response, respectively, may be reclassified as public or, in the alternative, to submit public redacted versions of these filings by Friday, 14 May 2021, at 16:00 hours.

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



Judge Rosario Salvatore Aitala,
Single Judge

Dated this Friday, 7 May 2021

At The Hague, The Netherlands