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No. ICC-01/14-01/21

Date: 23 April 2021

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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 'Decision on matters related to translation', 23 April 2021,
ICC-01/14-01/21-58-Conf

Decision 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
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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

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**

Other

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 Decision on matters related to translation.

I. PROCEDURAL HISTORY

1. On 7 January 2019, Judge Rosario Salvatore Aitala, acting as Single Judge on behalf of the Chamber, issued the ‘Warrant of arrest for Mahamat Said Abdel Kani’ (‘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’).⁶
5. On 17 March 2021, following the recomposition of the Chambers by the Presidency,⁷ 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.⁸

¹ 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 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 Prosecutor and the Defence) version filed on 18 March 2021 (ICC-01/14-01/21-6-Conf-Exp-Red2)) (the ‘Registry Report’).

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, pp. 4-5.

⁶ [Transcript of 29 January 2021](#), ICC-01/14-01/21-T-002-ENG.

⁷ [Decision assigning judges to divisions and recomposing Chambers](#), 16 March 2021, ICC-01/14-01/21-40.

⁸ [Decision on the designation of a Single Judge](#), ICC-01/14-01/21-42.

6. On 30 March 2021, the Defence filed 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’).⁹

7. On 7 April 2021, the Single Judge issued the ‘Order on disclosure and related matters’, thereby, *inter alia*, ordering the Prosecutor to ‘submit a report detailing the aspects of the investigation and the disclosure process in relation to the present proceedings [...] by [...] 16 April 2021’ (the ‘Disclosure Order’).¹⁰

8. On 7 April 2021, upon instruction by the Single Judge,¹¹ the Prosecutor filed the ‘Prosecution’s Agreement with Defence submission ICC-01/14-01/21-49-Conf’ (the ‘Prosecutor’s Agreement’).¹²

9. On 16 April 2021, the Prosecutor filed the ‘Prosecution’s First Report on Disclosure and Related Issues’ (the ‘Prosecutor’s First Disclosure Report’).¹³

II. SUBMISSIONS RECEIVED BY THE SINGLE JUDGE

A. The Joint Information

10. According to the Joint Information, the parties held *inter partes* discussions ‘au sujet de la langue choisie par Monsieur Said pour la procédure’ between 8 and 12 March 2021, and between 18 and 26 March 2021.¹⁴ As part of these *inter partes* discussions, the Prosecutor informed the Defence: (i) ‘de ce que les représentants du Bureau du Procureur avaient d’ores et déjà traduit de l’anglais au français certaines déclarations de témoins puisque l’une des deux langues officielles de la République centrafricaine est le français, qui est aussi l’une des deux langues de travail de la Cour’; and (ii) ‘qu’elle considérerait que le niveau de connaissance de la langue française de Monsieur Said pourrait lui permettre de se saisir d’éléments procéduraux en français’.¹⁵

⁹ 31 March 2021, ICC-01/14-01/21-49-Conf.

¹⁰ ICC-01/14-01/21-50-Conf, para. 29, p. 20.

¹¹ Email from the Single Judge, at 13:51 hours.

¹² ICC-01/14-01/21-51-Conf.

¹³ ICC-01/14-01/21-55-Conf, with four confidential, *ex parte* (only available to the Prosecutor) annexes, and one confidential annex.

¹⁴ Joint Information, ICC-01/14-01/21-49-Conf, paras 2-4.

¹⁵ Joint Information, ICC-01/14-01/21-49-Conf, para. 2.

11. According to the Defence, ‘la langue que Monsieur Said « comprend et parle parfaitement », donc la langue orale qu’il maîtrise pleinement, est le Sango’.¹⁶

The Defence further specifies that

[i]l est difficile pour Monsieur Said, [REDACTED], de suivre des débats juridiques en français. [REDACTED]. Il en va de même concernant la langue que Monsieur Said parle ; ce n’est qu’en Sango qu’il s’exprime sans faire face à une barrière linguistique, par exemple quand le Juge lui pose des questions.¹⁷

12. Nonetheless, as part of the *inter partes* discussions, the Defence informed the Prosecutor that: (i) Mr Said ‘veut contribuer à la célérité et à l’efficacité de la procédure’;¹⁸ and (ii) French is the language of the Defence team, as well as ‘[REDACTED]’.¹⁹ Therefore, ‘Monsieur Said et son équipe de Défense sont ouverts à l’idée de recevoir les éléments de preuve (tels que des déclarations antérieures de témoins [...])’, as well as ‘des documents importants (tels que le document contenant les charges ou la décision de confirmation des charges) en français sans en demander la traduction en Sango’.²⁰

13. As specified by the Prosecutor, this would mean that ‘les éléments de preuve à charge dit « directs » (déclarations antérieures de témoins, documents des Autorités Centrafricaines, etc.), utilisés au soutien du Document Contenant les Charges, seraient divulgués à la Défense en français’, whereas ‘certains éléments de preuves dit « indirects » permettant de comprendre certains éléments de preuve (notes d’enquêteurs, rapport d’enquête, etc.) ne seront pas traduits en français et donc que ces éléments indirects seront divulgués, a priori, en anglais’.²¹

14. In favour of this approach, the Defence submits that it has ‘conscience qu’il est plus économe et moins chronophage de faire procéder à des traductions en français [...] qu’en Sango’.²² In this regard, the Prosecutor avers that ‘le Sango était une langue essentiellement parlée et que par conséquent il était plus difficile de la traduire à l’écrit’ and that, in addition, there are ‘plusieurs types de Sango à l’écrit’.²³ The Prosecutor

¹⁶ Joint Information, ICC-01/14-01/21-49-Conf, para. 3.

¹⁷ Joint Information, ICC-01/14-01/21-49-Conf, para. 3.

¹⁸ Joint Information, ICC-01/14-01/21-49-Conf, para. 3.

¹⁹ Joint Information, ICC-01/14-01/21-49-Conf, paras 3, 12.

²⁰ Joint Information, ICC-01/14-01/21-49-Conf, para. 3.

²¹ Joint Information, ICC-01/14-01/21-49-Conf, para. 8.

²² Joint Information, ICC-01/14-01/21-49-Conf, para. 3.

²³ Joint Information, ICC-01/14-01/21-49-Conf, para. 5.

further specifies that, in any case, (i) ‘les versions originales des éléments de preuve saisis par les Autorités Centrafricaines seraient en français’;²⁴ and (ii) ‘qu’un certain nombre de documents tombant sous la Règle 77 ou l’Article 67(2) étaient déjà en français en raison de leur origine’.²⁵

15. However, the Defence specifies that ‘il est crucial que [Mr Said] soit assisté par son Conseil ou des membres de son équipe de Défense quand il s’agit de se saisir du sens de documents rédigés en français’.²⁶ The Defence adds that, without such assistance, ‘il sera difficile pour Monsieur Said de saisir tous les enjeux et de complètement comprendre des documents qui lui seraient communiqués’.²⁷

16. As regards the oral French language skills of Mr Said, the Defence submits that Mr Said ‘aura besoin d’interprétation lors des audiences’.²⁸ In the view of the Prosecutor, ‘il convenait de soumettre Monsieur Said à une expertise linguistique’.²⁹

17. The Defence further indicates that, if the Prosecutor were to file the document containing the charges in English, the Defence ‘prendrait attache avec le Greffe pour en obtenir une traduction en français dans les plus brefs délais’.³⁰

18. Accordingly, the parties request the Single Judge to endorse the following agreement: (i) Mr Said and his Defence team ‘recevront en français les déclarations antérieures des témoins et, dans la mesure du possible, les éléments de preuve à charge, en particulier les éléments de preuve cités au soutien du Document Contenant les Charges’; (ii) ‘[s]i des éléments à charge devaient ne pas exister en version française’, the parties would engage in *inter partes* discussions, ‘au cas par cas, pour évaluer de la nécessité de procéder à une traduction en français’; and that (iii) ‘[l]a Défense, si elle pourra, de manière ponctuelle, faire appel à un traducteur/interprète, ne demandera pas, dans ces circonstances, de traduction de portions d’éléments de preuve ou de déclarations antérieures en Sango dans la mesure où Monsieur Said est assisté par sa Défense dans la compréhension des éléments qui lui sont divulgués en français’.³¹

²⁴ Joint Information, ICC-01/14-01/21-49-Conf, para. 6.

²⁵ Joint Information, ICC-01/14-01/21-49-Conf, para. 7.

²⁶ Joint Information, ICC-01/14-01/21-49-Conf, para. 11, 3.

²⁷ Joint Information, ICC-01/14-01/21-49-Conf, para. 3.

²⁸ Joint Information, ICC-01/14-01/21-49-Conf, para. 10.

²⁹ Joint Information, ICC-01/14-01/21-49-Conf, para. 9.

³⁰ Joint Information, ICC-01/14-01/21-49-Conf, para. 13.

³¹ Joint Information, ICC-01/14-01/21-49-Conf, paras 14-15.

19. Further, the Defence indicates that each of the parties ‘déposera les écritures qu’elles pensent utiles’ concerning the necessity of interpretation during the hearings.³²

B. The Prosecutor’s Agreement

20. The Prosecutor confirms that she ‘is a signatory to the proposed agreement’³³ and elaborates that the Joint Information ‘was the result of an agreement between the Parties, in particular to avoid and [sic] delays linked to affixing the signature of the Prosecutor’.³⁴

21. The Prosecutor further requests that the Single Judge accept the parties’ agreement as detailed in the Joint Information.³⁵

C. The Prosecutor’s First Disclosure Report

22. The Prosecutor submits, *inter alia*, that she ‘has continuously ensured the translation of English documents into French’ and that ‘38 translation and transcription requests into French are pending’ and ‘[a] further 12 items have been identified for translation into French’.³⁶ According to the Prosecutor, due to the agreement reached with the Defence in the Joint Information, no documents have been translated into Sango.³⁷

III. DETERMINATION BY THE SINGLE JUDGE

23. The Single Judge notes articles 50(2) and 67(1)(a) and (f) of the Statute and rule 76(3) of the Rules.

24. With regard to the submission that ‘Monsieur Said et son équipe de Défense recevront en français les déclarations antérieures des témoins’,³⁸ the Single Judge notes that, under rule 76(3) of the Rules, ‘[t]he statements of the prosecution witnesses *shall* be made available in original and in a language which the accused *fully understands and speaks*’ (emphasis added). In this regard, the Single Judge recalls that, [REDACTED] at the hearing for his initial appearance before the Single Judge, Mr Said

³² Joint Information, ICC-01/14-01/21-49-Conf, para. 14.

³³ Prosecutor’s Agreement, ICC-01/14-01/21-51-Conf, para. 1.

³⁴ Prosecutor’s Agreement, ICC-01/14-01/21-51-Conf, para. 1, n. 1.

³⁵ Prosecutor’s Agreement, ICC-01/14-01/21-51-Conf, para. 3.

³⁶ Prosecutor’s First Disclosure Report, ICC-01/14-01/21-55-Conf, para. 9.

³⁷ Prosecutor’s First Disclosure Report, ICC-01/14-01/21-55-Conf, para. 10.

³⁸ Joint Information, ICC-01/14-01/21-49-Conf, para. 14.

has indicated that Sango is the language he fully understands and speaks.³⁹ Indeed, the Defence confirms that ‘la langue que Monsieur Said « comprend et parle parfaitement » [...] est le Sango’ in the Joint Information.⁴⁰ Furthermore, according to the Joint Information, ‘il sera difficile pour Monsieur Said de saisir tous les enjeux et de complètement comprendre des documents qui lui seraient communiqués [en français]’ without the assistance of his Defence team.⁴¹ Considering that the duty arising from rule 76(3) of the Rules is unambiguous and that the Joint Information establishes that Mr Said is not able to independently understand the relevant information in French, the Single Judge finds that the statements of the Prosecutor’s witnesses shall be translated into Sango. Accordingly, insofar as the Prosecutor has not done so,⁴² the Single Judge does not deem them to have been disclosed and orders the Prosecutor to make the statements of witnesses available also in Sango.

25. The Single Judge turns to the assertion that ‘Monsieur Said et son équipe de Défense recevront en français [...], dans la mesure du possible, les éléments de preuve à charge [...]’ and, ‘[s]i des éléments à charge devaient ne pas exister en version française, Défense et Accusation engageront des discussions *inter partes*, au cas par cas, pour évaluer de la nécessité de procéder à une traduction en français’.⁴³ In this regard, the Single Judge recalls that the statutory framework requires core documents to be translated in a language that the suspect ‘fully understands and speaks’, which is Sango in the present case, but that suspects do not have an absolute right to have *all* documents translated.⁴⁴ Nonetheless, should the parties so wish, they may themselves agree to arrange translations of evidence or other material into French. The Single Judge does not consider it necessary to address this matter any further and emphasises that

³⁹ Registry Report, ICC-01/14-01/21-6-Conf-Exp-Red2, para. 11; [Transcript of 29 January 2021](#), ICC-01/14-01/21-T-002-ENG, p. 10, lines 5-9. See also [Transcript of 28 January 2021](#), ICC-01/14-01/21-T-001-ENG, p. 4, lines 23, to p. 5, line 1.

⁴⁰ Joint Information, ICC-01/14-01/21-49-Conf, para. 3.

⁴¹ Joint Information, ICC-01/14-01/21-49-Conf, para. 3.

⁴² See Prosecutor’s First Disclosure Report, ICC-01/14-01/21-55-Conf, para. 10.

⁴³ Joint Information, ICC-01/14-01/21-49-Conf, para. 14.

⁴⁴ Article 67(1)(a) and (f) of the Statute; Appeals Chamber, *The Prosecutor v. Germain Katanga, Judgment on the appeal of Mr. Germain Katanga against the decision of Pre-Trial Chamber I entitled “Decision on the Defence Request Concerning Languages”*, 27 May 2008, ICC-01/04-01/07-522 (OA3), paras 3, 61-62; Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom, Decision on Language Proficiency of Alfred Yekatom for the Purposes of the Proceedings*, 11 January 2019, ICC-01/14-01/18-56-Red, paras 14, 19; Appeals Chamber, *The Prosecutor v. Dominic Ongwen, Decision on Mr Ongwen’s request for time extension for the notice of appeal and on translation*, 24 February 2021, ICC-02/04-01/15-1781 (A), para. 11.

any such *inter partes* agreement shall not affect the expeditiousness of the proceedings or any time limits.

26. In view of the preceding considerations, and further noting the absence of a specific request formulated by the Defence, the Single Judge finds it not necessary to address the Defence's contention that, 'si elle pourra, de manière ponctuelle, faire appel à un traducteur/interprète, ne demandera pas, dans ces circonstances, de traduction de portions d'éléments de preuve ou de déclarations antérieures en Sango dans la mesure où Monsieur Said est assisté par sa Défense dans la compréhension des éléments qui lui sont divulgués en français'.⁴⁵

27. Lastly, the Single Judge observes that the Defence indicates that, 'si la langue choisie par l'Accusation pour rédiger le DCC était l'anglais, elle prendrait attache avec le Greffe pour en obtenir une traduction en français dans les plus brefs délais'.⁴⁶ However, as established, the Document Containing the Charges, as one of the core documents, must be translated into Sango in the context of the present proceedings. Moreover, the Single Judge will strictly apply the absence of a 'general requirement to translate filings into French or *vice versa*',⁴⁷ and reiterates that 'counsel fluent in one of the working languages of the Court is expected to sufficiently understand the other working language so as to be able to respond to documents drafted in that language'.⁴⁸ In light of these principles, the Single Judge emphasises that the Defence shall not request any translations directly from the Registrar. Accordingly, the Single Judge expects the Prosecutor to continue presenting her submissions in English, as has been done hitherto, while the Defence may continue doing so in French.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

- a) **FINDS** that the statements of the Prosecutor's witnesses shall be translated into Sango;

⁴⁵ Joint Information, ICC-01/14-01/21-49-Conf, para. 14.

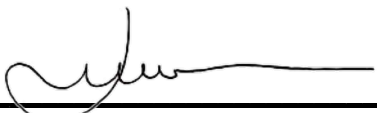
⁴⁶ Joint Information, ICC-01/14-01/21-49-Conf, para. 13.

⁴⁷ Appeals Chamber, *The Prosecutor v. Laurent Koudou Gbagbo*, [Decision on Mr Gbagbo's request for translation and an extension of time for the filing of a response to the document in support of the appeal](#), 22 August 2013, ICC-02/11-01/11-489 (OA5), para. 10.

⁴⁸ Disclosure Order, ICC-01/14-01/21-50-Conf, para. 45.

- b) **ORDERS** the Prosecutor to make the statements of the Prosecutor's witnesses available in Sango;
- c) **FINDS** that only core documents shall be translated into Sango and that any *inter partes* agreements regarding translations of evidence or other material into French shall not affect the expeditiousness of the proceedings or any time limits;
- d) **ORDERS** that the Document Containing the Charges must be translated into Sango, that there is no general requirement to translate filings into French or *vice versa*, and that the Defence shall not request any translations directly from the Registrar; and
- e) **EXPECTS** the Prosecutor to continue presenting her submissions in English, as has been done hitherto, while the Defence may continue doing so in French.

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



Judge Rosario Salvatore Aitala,
Single Judge

Dated this Friday, 23 April 2021

At The Hague, The Netherlands