



Original: **English**

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

Date: **21 May 2021**

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Single Judge

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

Public

**Public Redacted Version of “Prosecution’s Observations on the Registry’s French and Sango Language Proficiency Assessment of Mr Said (ICC-01/14-01/21-78)”,
dated 21 May 2021**

Source: Office of the Prosecutor

Document 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 Mahamat Said Abdel Kani

Ms Jennifer Naouri

Mr Dov Jacobs

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Language Support Section
Mr Diederick Zanen

I. INTRODUCTION

1. The Registry's assessment of Mr Said's oral and written language proficiency¹ is consistent with the Parties' joint position that the statements of Prosecution witnesses and the Document Containing the Charges should be made available in French, not Sango.² Of particular note, the results of the language assessment demonstrate that translation of case material into written Sango [REDACTED].

2. The Prosecution submits that the Single Judge should reconsider his prior decision ordering that core documents be provided in Sango ("Decision")³ and order instead that the statements of Prosecution witnesses and the Document Containing the Charges should be made available in French.

II. CONFIDENTIALITY

3. The Prosecution's observations are filed as Confidential pursuant to regulation 23*bis*(1) of the Regulations of the Court, since the Prosecution refers to information about the confidential language proficiency assessments of Mr Said, which was detailed in the confidential annex of the Registry filing.⁴ A public redacted version of the Prosecution's observations will be filed concurrently.

III. SUBMISSIONS

4. On 7 May 2021, the Single Judge ordered the Registry's Language Services Section to conduct assessments as to the oral and written French and Sango language proficiency of Mr Said.⁵ In its assessment, conducted on 11 May 2011, the Registry's Language Services Section found that [REDACTED],⁶ [REDACTED].⁷ The Registry

¹ ICC-01/14-01/21-78-Conf-Anx1.

² ICC-01/14-01/21-49-Conf; ICC-01/14-01/21-51-Conf; ICC-01/14-01/21-68-Corr-Red; ICC-01/14-01/21-71-Conf.

³ ICC-01/14-01/21-58-Conf, p. 10.

⁴ ICC-01/14-01/21-78, para. 2.

⁵ ICC-01/14-01/21-73, p. 10.

⁶ [REDACTED]

further concluded that “Mr Said is able to read and understand the main points of a relatively complex text such as a witness statement written in French.”⁸

5. Given the Registry’s assessment of Mr Said’s French language skills, in particular its conclusion that Mr Said has the ability to understand the main points of a document like a witness statement in French,⁹ the Prosecution submits that an order requiring the core documents to be provided in French would be fully consistent with Mr Said’s rights under article 67(1)(a) of the Statute and rule 76(3) of the Rules. This is especially so given that Mr Said has specifically requested to receive the core materials in French translation, rather than in Sango.¹⁰

6. In this regard, the Prosecution notes that the Appeals Chamber has clarified that “[a]n accused fully understands and speaks a language when he or she is completely fluent in the language in ordinary, non-technical conversation; it is not required that he or she has an understanding as if he or she were trained as a lawyer or judicial officer. If there is any doubt as to whether the person fully understands and speaks the language of the Court, the language being requested by the persons should be accommodated.”¹¹

7. Ordering this case’s core material to be translated into French rather than into Sango would also be consistent with the approach adopted by Pre-Trial Chamber II in *Prosecutor v. Yekatom*.¹² In that case, Mr Yekatom had indicated in his first appearance that he spoke Sango “perfectly” while his French was “not very good.”¹³ The Single Judge ordered the Registry to assess Mr Yekatom’s French proficiency.¹⁴ The Registry found that Mr Yekatom was “able to read and generally understand written French” and able to understand and converse orally in French “with a degree of fluency and

⁸ ICC-01/14-01/21-78-Anx2, p. 2.

⁹ ICC-01/14-01/21-78-Anx2, p. 2.

¹⁰ ICC-01/14-01/21-68-Corr-Red.

¹¹ ICC-01/04-01/07-522 (OA 3), para. 3.

¹² See ICC-01/14-01/18-56-Red.

¹³ ICC-01/14-01/18-56-Red, para. 2.

¹⁴ ICC-01/14-01/18-56-Red, para. 4.

spontaneity.”¹⁵ The Single Judge ultimately concluded that Mr Yekatom was “proficient” in French for the purpose of the proceedings,¹⁶ and the Prosecution proceeded to make available witness statements in French translation rather than Sango.

8. On the basis of the specific circumstances presented in *Yekatom*, while the core materials were ultimately provided in French rather than Sango, the Single Judge did arrange for an additional safeguard, finding that Mr Yekatom had “the right to have, on an *ad hoc* basis, the assistance of a French-Sango interpreter when reading the witness statements (rule 76(3) of the Rules), if he so wishes.”¹⁷ The Single Judge explained that he considered this arrangement necessary “in the interests of fairness, and with a view to increasing Yekatom’s comprehension of the evidence.”¹⁸

9. The Prosecution does not take a position on whether the Single Judge should order the Registry to arrange for an interpreter to support Mr Said’s review of the witness statements, on an *ad hoc* basis, if he so wishes. However, it should be noted that the Registry’s language assessment suggests that Mr Said [REDACTED].

10. Additionally, based on the results of the assessment, the provision of Sango audio translations of witness statements, which was one possibility raised by the Single Judge in his order requiring the language proficiency assessments,¹⁹ is not necessary or proportionate in this case. Mr Said understands written French, as the Registry assessment confirms. It is not proportionate because preparing such audio translations would consume large amounts of time and resources and risk substantial

¹⁵ ICC-01/14-01/18-56-Red, para. 8.

¹⁶ ICC-01/14-01/18-56-Red, p. 9.

¹⁷ ICC-01/14-01/18-56-Red, p. 9.

¹⁸ ICC-01/14-01/18-56-Red, p. 9.

¹⁹ ICC-01/14-01/18-56-Red, para. 18.

delay to the proceedings,²⁰ without offering any prospect of a meaningful benefit. [REDACTED].²¹

11. If Mr Said has difficulty understanding certain passages of specific French translations of witness statements or the Document Containing the Charges, it can be expected that the technical assistance of his counsel will be of greater use than communication of the underlying material orally in Sango. Furthermore, if materials are ultimately provided in oral Sango rather than written French, unnecessary complications may arise. For example, Mr Said might find it difficult to confer with his counsel about specific passages in the witness statements. This is so because his counsel would be navigating on the basis of a paper document, where page and paragraph numbers are available as easy reference points, whereas Mr Said would be using an electronic audio recording, where timestamps are the principal reference points.

²⁰ Many of the practical considerations raised previously by the Prosecution in relation to translation of materials into Sango would still apply in the case of an order to provide Sango audio translations. See ICC-01/14-01/21-71-Conf, paras. 11-24 (discussing the large-scale scope of the work and the uncertain status of contractors with suitable language skills).

²¹ ICC-01/14-01/21-78-Conf-Anx1, pp. 3-4.

IV. RELIEF SOUGHT

12. For the above reasons, the Prosecution requests the Single Judge to:

- a. Reconsider his Decision by ordering that statements of Prosecution witnesses should be disclosed in French and that the Document Containing the Charges should be made available in French;
- b. If deemed necessary, order that the Registry provide, on an *ad hoc* basis, the assistance of a French-Sango interpreter when Mr Said reads the witness statements, if he so wishes.



Fatou Bensouda, Prosecutor

Dated this 21st day of May 2021
At The Hague, The Netherlands