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No.: ICC-01/14-01/21
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TRIAL CHAMBER IV

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

**With Confidential *EX PARTE* Annex I only available to the Office of the Prosecutor
and Confidential *EX PARTE* Annex II only available to the Registry**

Registry Submissions in view of the 28 January 2022 Status Conference

Source: Registry

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

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I. Introduction

1. Pursuant to the “Order Scheduling the First Status Conference” (“Order”),¹ issued in the case of *The Prosecutor v. Mahamat Said Abdel Kani* (“Case” and “Mr Said Abdel Kani”, respectively) by Trial Chamber VI (“Chamber”) on 14 January 2022, the Registry submits its views on issues of: (1) languages to be used by the parties, participants, and the witnesses the parties intend to call (i.e. Point 1.D of the Order); (2) protective measures for witnesses (i.e. Point 1.E.(4) of the Order); and (3) victim participation in the proceedings (i.e. Point 1.J of the Order).
2. In addition, pursuant to regulation 24 *bis*(1) of the Regulations of the Court (“RoC”), the Registry provides information below pertaining to the Registry services to be provided by the Court Management Section (“CMS”) in view of the upcoming trial hearings and specific other issues, and in annex by the Victims Participation and Reparations Section of the Registry (“VPRS”).

II. Classification

2. In accordance with regulation 23 *bis*(1) of the RoC, Annex I to the present submissions is classified confidential *ex parte* only available to the Office of the Prosecutor (“Prosecution”), as it refers to personal and case-specific information regarding potential witnesses, and to the internal operations of the Court. Annex II is classified confidential *ex parte* only available to the Registry because it contains sensitive information pertaining to victims. For the purpose of the upcoming public status conference, a public redacted version of Annex II is filed simultaneously.

¹ Trial Chamber VI, “Order Scheduling the First Status Conference” (“Order”), 14 January 2022, ICC-01/14-01/21-226, para. 2 referring to points D. , E.(4) and J of the Order.

III. Applicable law

3. The following provisions are of particular relevance to the present submissions: articles 43, 50, 67(1)(a) and 68 of the Rome Statute (“Statute”), rules 16 to 19, 87 and 88 of the Rules of Procedure and Evidence (“Rules”), regulations 23 *bis*(1), 24 *bis*(1), 39(1), 40, 41 of the RoC, and regulations 57(1), 58(3), 61, 64(7), 67, 69, and 80 to 96 of the Regulations of the Registry (“RoR”).

IV. Submissions

Languages at trial

7. The Language Services Section of the Registry (“LSS”) has an internal team comprising four Sango interpreters, who are currently deployed in the hearings in the *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* (“Yekatom and Ngaïssona Case”). The Registry intends to hire additional resources of Sango interpreters. This is because, for the time being, there are no linguistic resources for a second trial involving the Sango language at hearings, should trial hearings in both cases (i.e. the Case and the Yekatom and Ngaïssona Case), be scheduled the same day.
8. Sango being a language of lesser diffusion for which there are no interpretation schools, it falls to LSS to find, recruit and train candidates with high potential in order for them to be able to interpret at hearings. Based on the Registry’s previous experience, the training should have a minimum duration of six months before deployment in the courtroom in order to help ensure the quality of interpretation for the proceedings.
9. LSS is in the process of securing the necessary additional funding to hire and train the aforesaid additional resources,² and anticipates to finalise the recruitment and appointment process in approximately one month. The same observation applies to the need for French and English interpreters, for which

² By way of Contingency Fund.

the necessary funds, additional to the one approved to date by the Assembly of State Parties, will also be requested.³

10. In view of the evaluation of Mr Said Abdel Kani's linguistic proficiency in French and Sango,⁴ and Pre-Trial Chamber II's decision thereon,⁵ and in light of the above, the Chamber may wish to take some mitigating measures in order to avoid to the extent possible simultaneous hearings in the present case and the Yekatom and Ngaïssona Case, requiring Sango interpretation. These measures may be envisaged for a limited period corresponding to, as above, the first six months after recruitment and training of the additional Sango interpreters. These measures may include: (i) a coordinated approach between the Chamber and Trial Chamber V, for them to decide on the court calendar so that the court hearings in both cases could equally progress, or (ii) alternating hearing days. Another option the Chamber may wish to consider, with Trial Chamber V, is to confer with the respective defence teams in order to determine in advance what hearings may be held without a Sango booth. This may be the case for instance for status conferences and hearings where the witnesses are scheduled to testify in French or English.

Protective measures for witnesses

11. The measures the Registry's Victims and Witnesses Unit ("VWU") can put in place to protect witnesses can generally be described as follows. Any non-procedural protective measures that may be implemented depend on the level of risk incurred by the witness. These measures include the implementation of good practices, the setting up of an Initial Response System, assisted move, an internal resettlement within the relevant country and international relocation. Internal resettlement and international relocation both require an inclusion of

³ By way of Contingency Fund.

⁴ Registry, « Registry Transmission of French and Sango Language Proficiency Assessments of Mahamat Said Abdel Kani and Report on Feasibility of Translating Written Documents into Sango », 19 May 2021, ICC-01/14-01/21-78 and ICC-01/14-01/21-78-AnxII.

⁵ Pre-Trial Chamber II, "Second Decision on matters related to translation", 1 June 2021, ICC-01/14-01/21-86.

the witnesses into the Court's protection program ("ICCPP"). For international relocations, the Court also needs the cooperation of the relevant partner states that signed a relocation agreement with the Registry or accepts to relocate witnesses on their territory on an *ad hoc* basis.

12. The admission of a witness in the ICCPP is a voluntary measure of last resort.

Considering the extremely heavy impact an inclusion in the ICCPP has on the life of a person and her/his family members, the Registry always seeks to strike a balance between the intrusiveness of the protection measure and the risk and/or threat that the individual may face. This measure is only applied where no other alternative protection measure would be adequate, and where a person is considered to be significantly at risk. Inclusion in the ICCPP is also subject to an assessment of the person's psychological suitability to adhere to the strict rules of a protection programme.

Protection referrals

13. The Registry encourages the parties and participants to follow the procedure established in regulations 80(1) and 96(2) of the RoR for any referrals to the ICCPP or other forms of protection of witnesses and victims. Upon receipt of a referral for protection, the Registry performs a threat and risk assessment of the security situation of the referred individual. For the purpose of assessment and recommendation of the appropriate protective measures, the Registry emphasizes that it is essential that the parties provide the Registry with specific information on the nature of the threat or risk to which the individual could be exposed. The Registry remains available to assist the parties in that regard and provide them with a protection referral form to facilitate any such request.

Specific case related information

14. Case-related data is provided in the confidential Annex I to the present submissions on an *ex parte* basis only available to the Prosecution. This is to accord with the sensitivity and nature of the information pertaining to Prosecution witnesses.

Victim Participation

15. The Registry provides in Annex II to the present submissions: (i) an update and forecast on additional victim applications for participation in the Case; and (ii) other observations relevant to the participation of victims at trial, namely on the admission process of victims in the proceedings and legal representation. This is in compliance with the Chamber's Order and email instruction on 24 December 2021, requesting the VPRS to "prepare a brief report on the impact of the confirmation decision (ICC-01/14-01/21-218-Conf) on the number of victims who are authorised to participate in the trial proceedings".⁶

Further Submissions

16. CMS is preparing for the Chamber a detailed information paper on all services provided to support the smooth running of the court proceedings, as per CMS's practice with other cases. CMS will further present this paper to the

⁶ Email from Trial Chamber VI to the VPRS on 24 December 2021 at 9.46. Of note, the Chamber ruled that "[i]f the VPRS has any additional information it wishes to bring to the attention of the Chamber in relation to victims participation and/or representation, it is invited to include this in the abovementioned report."

Chamber and its staff in anticipation of the issuance of the order of conduct of the proceedings.



Marc Dubuisson
Director Division of Judicial Services
on behalf of Peter Lewis, Registrar

Dated this 21 January 2021

At The Hague, The Netherlands