



Original: English

**No. ICC-01/14-01/18
Date: 11 January 2019**

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. ALFRED YEKATOM***

PUBLIC

Public Redacted Version of “Decision on Language Proficiency of Alfred Yekatom for the Purposes of the Proceedings”

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor

James Stewart, Deputy Prosecutor

Counsel for the Defence

Stéphane Bourgon

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

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Paddy Craig

**Victims Participation and Reparations
Section**

Language Services Section

Alexandra Tomic

JUDGE ROSARIO SALVATORE AITALA, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court” or “ICC”),¹ issues this decision on the language proficiency of Alfred Yekatom (“Yekatom”) for the purposes of the proceedings.

I. PROCEDURAL HISTORY

1. On 11 November 2018, the Chamber issued a warrant of arrest against Yekatom² who was surrendered to the Court on 17 November 2018.
2. On 23 November 2018, Yekatom appeared before the Chamber and stated that he spoke Sango “perfectly” while his French was “not very good”.³ The confirmation hearing was scheduled to commence on Tuesday, 30 April 2019.⁴
3. On 17 December 2018, the Prosecutor submitted the “Prosecution’s Request for an Order on YEKATOM’s French Proficiency Level” (the “Request”).⁵
4. On 19 December 2018, the Single Judge ordered the Registry’s Language Services Section (the “LSS”) to conduct a French language proficiency assessment of Yekatom and to submit a report to the Chamber no later than 28 December 2018.⁶
5. On 24 December 2018, the Chamber was notified of the “Registry Transmission of French Language Proficiency Assessment of Alfred Yekatom” (the “Registry Report”).⁷
6. On 7 January 2019, the Defence provided its observations on the Request and the Registry Report;⁸ and the Prosecutor provided observations on the Registry Report.⁹

¹ Pre-Trial Chamber II, Decision designating a Single Judge, 6 December 2018, ICC-01/14-01/18-27.

² Pre-Trial Chamber II, Warrant of Arrest for Alfred Yekatom, ICC-01/14-01/18-1-US-Exp. A public redacted version of the warrant of arrest was issued on 17 November 2018, *see* ICC-01/14-01/18-1-Red.

³ Pre-Trial Chamber II, Transcript of Hearing, ICC-01/14-01/18-T-1-ENG ET, p. 6, lines 20-21.

⁴ Pre-Trial Chamber II, Transcript of Hearing, ICC-01/14-01/18-T-1-ENG ET, p. 8, lines 20-25.

⁵ ICC-01/14-01/18-34.

⁶ Pre-Trial Chamber II, Corrigendum of “Order to Conduct a French Language Proficiency Assessment of Alfred Yekatom”, 19 December 2018, ICC-01/14-01/18-36-Corr.

⁷ ICC-01/14-01/18-42 with one confidential annex.

⁸ ICC-01/14-01/18-48-Conf.

II. SUBMISSIONS

7. In the Request, the Prosecutor asks the Chamber to “find YEKATOM fluent in French for the purposes of the Statute, Rules and Regulations”.¹⁰ The Prosecutor argues that Yekatom communicates in French over the phone while in detention¹¹ and that videos containing Yekatom’s speeches, interviews and conversations show him speaking French on a wide-range of matters to a diverse audience.¹² It is also maintained that Yekatom signed and drafted documents and communications written in French.¹³ The Prosecutor also recalls that Yekatom is a member of the *Assemblée Nationale* and that French is one of CAR’s official languages and used in legal and administrative matters.¹⁴ Alternatively, in case the Chamber finds that Yekatom does not fully speak and understand French within the meaning of the statutory framework, the Prosecutor requests that “only such translation and/or interpretation be provided to YEAKTOM as necessary for him to understand the case or charges against him, in view of his assessed level of French proficiency”.¹⁵

8. The LSS, having conducted a language proficiency assessment in French, concluded that Yekatom is able to understand and converse freely in French on a variety of topics; he is able to interact with a degree of fluency and spontaneity. As regards his reading capacity, Yekatom is able to read and generally understand written French. Having evaluated, in addition, the videos referenced by the Prosecutor in the Request, the LSS concluded that Yekatom speaks fluent colloquial French and expresses himself well and clear; he has no problem understanding the journalist’s French and is able to communicate effectively and to the point. [REDACTED].¹⁶

⁹ ICC-01/14-01/18-50.

¹⁰ Request, ICC-01/14-01/18-34, paras 1, 3-7 and 25.

¹¹ Request, ICC-01/14-01/18-34, para. 5.

¹² Request, ICC-01/14-01/18-34, paras 3-4.

¹³ Request, ICC-01/14-01/18-34, para. 5.

¹⁴ Request, ICC-01/14-01/18-34, para. 5.

¹⁵ Request, ICC-01/14-01/18-34, paras 2, 10-24 and 25.

¹⁶ Registry Report, ICC-01/14-01/18-42-Conf-Anx, p. 3.

9. The Prosecutor in the observations to the Registry Report repeats that, as demonstrated by the LSS assessment, Yekatom is proficient in French and requests that the Chamber makes a finding accordingly.¹⁷

10. The Defence in its observations to the Request and the Registry Report requests the Chamber to find that Yekatom is not proficient in French for the purposes of the proceedings.¹⁸ [REDACTED].¹⁹ It also argues that within the statutory framework the language proficiency refers not merely to Yekatom's general language abilities, but specifically to his ability to engage in criminal proceedings, including comprehending observations, opinions and ideas in written form.²⁰ Therefore, the Defence requests that Yekatom and his Defence team receive the "permanent assistance" of a French-Sango interpreter²¹ who should be allowed "unsupervised visits" in the ICC Detention Centre "on a par with an assistant", regardless of whether counsel is also present.²² Whereas the Defence accepts "not to receive the written translation of all filings and witness statements into Sango", it requests to receive (i) French translations of all filings; and (ii) the evidence in the original language and, as the case may be, translated into French.²³ In addition, the Defence requests to have the right to seek additional translation into Sango of certain material or a discrete portion thereof.²⁴

III. DETERMINATION OF THE SINGLE JUDGE

11. The Single Judge notes articles 50(2), 61 and 67(1)(a) and (f) of the Rome Statute, rule 76 and 121(1), second sentence, of the Rules of Procedure and Evidence (the "Rules") and regulations 23*bis*, 39 and 40 of the Regulations of the Court (the "Regulations").

12. Article 67(1)(a) of the Statute provides that the suspect has the right "to be informed promptly and in detail of the nature, cause and content of the charge, in a language which [he or she] fully understands and speaks". In this regard, the Appeals

¹⁷ ICC-01/14-01/18-50.

¹⁸ ICC-01/14-01/18-48-Conf, paras 1, 17, 21.

¹⁹ ICC-01/14-01/18-48-Conf, para. 16.

²⁰ ICC-01/14-01/18-48-Conf, paras 19-20.

²¹ ICC-01/14-01/18-48-Conf, paras 25-27, 31.

²² ICC-01/14-01/18-48-Conf, para. 32.

²³ ICC-01/14-01/18-48-Conf, paras 24, 33.

²⁴ ICC-01/14-01/18-48-Conf, paras 35-37.

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”.²⁵

13. Article 67(1)(f) of the Statute stipulates that the suspect has the right “[t]o have, free of cost, the assistance of a competent interpreter and such translations *as are necessary to meet the requirements of fairness*, if any of the proceedings or documents presented to the Court are not in a language which the [suspect] fully understands and speaks” (emphasis added).

14. The Single Judge recalls that the assessment of the language abilities of any suspect must be made on the basis of the facts on a case-by-case basis. It is also recalled that, as other pre-trial chambers have consistently held, suspects do not have an absolute right to have *all* documents translated into a language which they fully understand and speak.²⁶

²⁵ Appeals Chamber, *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” (“Appeals Judgment on Languages”), 27 May 2008, ICC-01/04-01/07-522, paras 3, 49, 59, 61-62.

²⁶ *Equally, for example*, Pre-Trial Chamber I, *Prosecutor v Thomas Lubanga Dyilo*, Decision on the Requests of the Defence of 3 and 4 July 2006, 4 August 2006, ICC-01/04-01/06-268, pp. 5-6; Pre-Trial Chamber I, *Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the Defence for Mathieu Ngudjolo Chui’s Request concerning translation of documents, 15 May 2008, ICC-01/04-01/07-477, p. 3; Pre-Trial Chamber III, *Prosecutor v Jean-Pierre Bemba Gombo*, Decision on the Defence’s Request Related to Language Issues in the Proceedings, 4 December 2008, ICC-01/05-01/08-307, paras 11-16; Pre-Trial Chamber II, *Prosecutor v Dominic Ongwen*, Decision Setting the Regime for Evidence Disclosure and Other Related Matters, 27 February 2015, ICC-02/04-01/15-203, para. 31.

Yekatom's Language Proficiency

15. In the initial appearance, Yekatom stated that he spoke Sango (“perfectly”) and French (“not very good”).²⁷ The Single Judge also notes the Defence argumentation that Yekatom’s “day-to-day language is Sango”.²⁸

16. **Sango.** [REDACTED].²⁹ The Single Judge finds that Yekatom is not proficient in Sango for the purposes of these proceedings. The Single Judge also notes that the Defence accepts not to receive the written translation of filings and witness statements into Sango.³⁰

17. **French.** Contrary to the allegation of the Defence, article 67(1)(a) of the Statute requires the assessment of the *general* language abilities of the suspect, as confirmed by the Appeals Chamber. For complex and technical tasks in criminal proceedings, suspects are typically assisted by their counsel. Having regard to the information at hand, the Single Judge concludes that Yekatom is proficient in French. [REDACTED].

Translation of Evidence

18. Rule 76(3) of the Rules imposes a duty on the Prosecutor to provide the suspect with witness statements in original and in a language which the suspect fully understands and speaks. The Defence accepts that the evidence be made available “in the original with at least a version in French”.³¹ [REDACTED] technical expertise provided by his Defence team and the *ad hoc* assistance of a French–Sango interpreter. Therefore, the Single Judge believes that in the interests of fairness, and with a view to increasing Yekatom’s comprehension of the evidence, Yekatom has the right, on an *ad hoc* basis, to be assisted by a French-Sango interpreter³² when reading the witness statements (rule 76(3) of the Rules), if he so wishes. To this end,

²⁷ Pre-Trial Chamber II, Transcript of Hearing, ICC-01/14-01/18-T-1-ENG ET, p. 6, lines 20-21.

²⁸ ICC-01/14-01/18-48-Conf, para. 22.

²⁹ ICC-01/14-01/18-42-Conf-Anx, p. 3; this appears to be accepted by the Defence, *see* ICC-01/14-01/18-48-Conf, para. 24.

³⁰ ICC-01/14-01/18-48-Conf, para. 24.

³¹ ICC-01/14-01/18-48-Conf, para. 24.

³² [REDACTED]. [REDACTED].

the Defence is tasked to liaise with the Registry sufficiently in advance for the proper organisation of said interpretation assistance.

Translation of Filings

19. In conformity with the Court’s case-law, the Single Judge rejects the Defence request to receive, as a matter of course, *all* filings into French.³³ As held previously, only such documents may be translated into French that are essential for Yekatom to understand the nature, cause and content of the charges within the meaning of article 67(1)(a) of the Statute. This concerns, first and foremost, core procedural documents, such as the warrant of arrest, pursuant to article 58 of the Statute,³⁴ and the document containing the charges, pursuant to article 61(3) of the Statute. In this context, the Single Judge notes that Yekatom is not conducting his defence in person but is assisted by counsel, as guaranteed under article 67(1)(d) of the Statute. It is recalled that appointed counsel satisfies the criteria set forth in rule 22 of the Rules and has indicated, when applying to be included in the list of counsel, to be able to work in both working languages of the Court (English and French).

20. Moreover, the right of Yekatom to be “informed promptly and in detail of the nature, cause and content of the charge, in a language which [he or she] fully understands and speaks” does not extend to his counsel and members of his Defence team.³⁵ Therefore, the Defence request³⁶ that the interpreter assist also the Defence team is rejected.

*Visits of Interpreter at ICC Detention Centre*³⁷

21. With regard to the Defence request that the interpreter be allowed to visit Yekatom “unsupervised” in the ICC Detention Centre, the Single Judge is of the view that the interpreter will provide the assistance in the context of Yekatom’s preparation of his defence. In this regard, the visiting rules applicable to counsel and Defence

³³ See paragraph 14 above.

³⁴ The French translation of the warrant of arrest for Yekatom was registered in the case record on 12 November 2018.

³⁵ *Equally, for example*, Appeals Judgment on Languages, ICC-01/04-01/07-522, para. 59; Pre-Trial Chamber III, *Prosecutor v Jean-Pierre Bemba Gombo*, Decision on the Defence’s Request Related to Language Issues in the Proceedings, 4 December 2008, ICC-01/05-01/08-307, para. 17.

³⁶ ICC-01/14-01/18-48-Conf, para. 31.

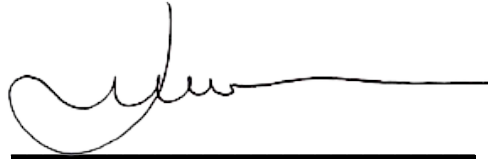
³⁷ [REDACTED].

team members apply equally to the interpreter, regardless of whether counsel is present during the visit.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

- a) **DETERMINES** that Alfred Yekatom is proficient in French for the purposes of these proceedings;
- b) **DECIDES** that Alfred Yekatom has 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;
- c) **ORDERS** the Defence to liaise with the Registry sufficiently in advance for the proper organisation of said interpretation assistance;
- d) **REJECTS** that all filings in the case be translated into French as a matter of course;
- e) **REJECTS** the request that the Defence team be assisted by a French-Sango interpreter;
- f) **DECIDES** that, when visiting Yekatom for the purposes of the preparation of his defence, visiting rules applicable to counsel and Defence team members apply equally to the interpreter, regardless of whether counsel is present during the visit; and
- g) **ORDERS** the Defence to submit a public redacted version of its observations (ICC-01/14-01/18-48-Conf) no later than Monday, 14 January 2019.

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

A handwritten signature in black ink, consisting of a large, stylized initial 'R' followed by a series of loops and a long horizontal stroke extending to the right.

**Judge Rosario Salvatore Aitala,
Single Judge**

Dated this Friday, 11 January 2019

At The Hague, The Netherlands