

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: **10 March 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***

Confidential

Prosecution's Response to Defence Request for the Translation of Protocols

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

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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**

Other

I. INTRODUCTION

1. The Office of the Prosecutor ("Prosecution") hereby responds to the Defence's request regarding translation of protocols put forward in the submission *"Réponse consolidée de la Défense à la « Prosecution's Submissions on the Modalities and Procedure for Evidence Disclosure » (ICC-01/14-01/21-11-conf) et à la « Prosecution's Proposal for Protocol on the Handling of Confidential Information and Contacts"* ("Defence Request")¹ submitting that this request be rejected as it finds no basis in the statutory framework or past precedent. In addition, translations of documents of this kind are unnecessary as the Defence team is capable of working in both English and French. Further, Registry should be consulted prior to a decision being taken.

II. CONFIDENTIALITY

2. The Response is filed confidential in accordance with regulation 23bis(2) of the Regulations of the Court as it relates to previous filings of the same classification. The Prosecution will provide a public redacted version as soon as practical.

III. SUBMISSIONS

3. In its response to the "Prosecution's Submissions on the Modalities and Procedure for Evidence Disclosure"² and "Prosecution's Proposal for Protocol on the Handling of Confidential Information and Contacts"³ ("Prosecution Requests") the Defence requests that the Single Judge order the Registry to translate all protocols in the proceedings against Mahamat Said Abdel Kani ("SAID") into French.⁴ The

¹ ICC-01/14-01/21-32-Conf.

² ICC-01/14-01/21-11-Conf.

³ ICC-01/14-01/21-13.

⁴ ICC-01/14-01/21-32-Conf., page 18.

Defence reasons that the working language of its team is French and so such translations would assist the Defence in exercising its duties.⁵

4. The working languages of the Court are *both* French and English. Thus, while the Defence is free to choose to work primarily in French, in the present case, the Defence showed that it is capable of submitting a detailed response to the Prosecution Requests demonstrating that the protocols were understood and their work not impaired.

5. The Prosecution further submits that SAID is not prejudiced by the lack of translation of the protocols into French. The protocols governing the modalities of disclosure as well as issues of confidentiality are mere auxiliary documents governing procedural aspects of the proceedings. The primary purpose of the protocols is to govern and assist the Parties in the conduct of the proceedings. Consequently, the protocols like all other procedural documents including filings and decisions can be explained by the Defence to SAID as his counsel are learned in both English and French. Pursuant to the statutory framework, as well as its interpretation by the Appeals Chamber⁶ and previous Chambers,⁷ only the document containing the charges, the decision confirming the charges, the list of the evidence relied upon by the Prosecutor and the witnesses' statements should be made available to a suspect and accused in a language he or she fully understands and speaks. Failing to provide the translation of a document of the type of the protocols at issue here would not amount to infringing the right set forth in article 67(1)(a), in particular when the suspect can rely on counsel able to function effectively in both working languages of the Court, which is the case here.

6. Finally, the Single Judge should consider consulting the Registry on this matter. The Registry should be provided the opportunity to submit its views prior to a

⁵ Ibid., paras. 7-8.

⁶ ICC-02/11-01/11-489, para. 10.

⁷ ICC-02/11-01/15-1141.

decision as translating procedural documents of this nature would set a precedent which could seriously impact on available resources for translation beyond the case at hand.

IV. RELIEF SOUGHT

7. For the above reasons, the Prosecution requests the Single Judge to reject the Defence Request.



Fatou Bensouda, Prosecutor

Dated this 10th day of March 2021
At The Hague, The Netherlands