

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/04-01/15

Date: 27 July 2020

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN UGANDA

**IN THE CASE OF
*THE PROSECUTOR v. DOMINIC ONGWEN***

Public

**Second Public Redacted Version of 'Corrected version of "Defence Request for an Order to the Registrar to Implement Immediate Procedures to Hire Translators and Interpreters for the Acholi Language"', filed on 30 July 2015,
ICC-02/04-01/15-281-Conf-Exp**

Source: Defence for Dominic Ongwen

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

The Office of the Prosecutor

Counsel for the Defence

Krispus Ayena Odongo

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants
(Participation/Reparation)

The Office of Public Counsel for the Victims

The Office of Public Counsel for the Defence

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Herman Von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Other
Section

I. INTRODUCTION

1. The Defence for Dominic Ongwen ('Defence') request His Honour Judge Cuno Tarfusser ('Single Judge') to order Registrar Herman von Hebel ('Registrar') to implement procedures immediately to hire additional translators and interpreters for the Acholi language.
2. Furthermore, until such time that the Registrar can guarantee such services are available, the Defence requests that the Single Judge order the Registrar to release as additional six hundred Euros (€600) per month to the Defence for the purpose of hiring an independent translator to translate public decision and public transcripts of the Court into Acholi.

II. CONFIDENTIALITY LEVEL

3. Pursuant to Regulation 23*bis* of the Regulations of the Court ('RoC'), the Defence files this request as confidential *ex parte* Registrar and Defence only because it reveals work-product information about the locations and times of ongoing Defence investigations. A public redacted version will be filed in due course.

III. PROCEDURAL HISTORY

4. On 20 May 2005, the Prosecution submitted its Article 58 Application for arrest of Mr Dominic Ongwen.
5. On 8 July 2005, Pre-Trial Chamber II issued an arrest warrant for Mr Ongwen.¹
6. On 18 April 2006, the last Acholi translated documents, ICC-02/04-01/15-6-tACH and ICC-02/04-01/15-7-tACH, were submitted by the Registry.

¹ ICC-02/04-01/15-6.

7. On 21 January 2015, Mr Ongwen was transferred to The Hague.
8. On 26 January 2015, Mr Ongwen made his initial appearance before Her Honour Judge Ekaterina Trendafilova (Ret.). Mr Ongwen confirmed to the Single Judge that the only language he speaks and understands is the Acholi dialect of the Lwo languages.²
9. On 17 April 2015, the Defence emailed CSS requesting information about whom to contact to have the Article 58 Application translated.³
10. On 19 May 2015, the Single Judge held a status conference with the Parties to discuss issues about the case.⁴
11. On 3 June 2015, the Single Judge's Legal Officer emailed the Parties stating that he contacted the Registrar regarding interpretation issues for interviews. The email contained a detailed answer from the Registry about the alleged progress of finding, testing, vetting, training and hiring interpreters.⁵
12. On 17 and 20 July 2015, the Defence met with Mr Ongwen at the ICC Detention Centre.
13. After the close of business on [REDACTED], the Defence requested an Acholi translator in Gulu, Uganda for [REDACTED] for the purpose of holding an interview with [REDACTED].

IV. SUBMISSIONS

The Law

14. Regulation 40(6) of the Regulations of the Court ('RoC') states:

² ICC-02/04-01/15-T-4-ENG, pg. 5:13-14.

³ See Confidential *ex parte* Annex A.

⁴ See ICC-02/04-01/15-T-6-ENG.

⁵ See Annex B.

“The Registrar shall ensure translation into the language of the person to whom...article 58 applies...if he or she does not fully understand or speak any of the working languages, of all decisions or orders in his or her case. Counsel shall be responsible for informing that person of the other documents in his or her case.”

15. Article 64(2) of the Rome Statutes states that “[t]he Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses”.

16. Article 67(1) of the Rome Statutes states:

(1) In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:

(b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused’s choosing in confidence [...]

(f) To have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings of or documents presented to the Court are not in a language which the accused fully understands and speaks [...]

17. Rule 42 of the Rules of Procedure and Evidence requires that “[t]he Court shall arrange for the translation and interpretation services necessary to ensure the implementation of its obligations under the Statute and the Rules.”

18. Regulation 83(1) of the RoC states that:

“Legal assistance paid by the Court shall cover all costs reasonably necessary as determined by the Registrar for an effective and efficient defence, including the remuneration of counsel, his or her assistants as referred to in regulation 68 and staff, expenditure in relation to the gathering of evidence, administrative costs, translation and interpretation costs...”

The Registrar has been Violating Mr Ongwen’s Rights by his Failure to adequately Staff for Acholi Translators and Interpreters

19. The Defence is unaware of any court record⁶ being translated into Acholi by the Registry since 18 April 2006. In the past nine years, and since Mr Ongwen arrived in The Hague, not one document has been translated in the case record.⁷ This is not acceptable.
20. The Defence first requested a translation of the Prosecution’s Article 58 Application on 17 April 2015.⁸ Over the next month, the Defence repeatedly asked CSS for an Acholi translation of the document.⁹ CSS, as the focal point for the Defence and Victims for translations, frequently checked on the status the translation and reverted back to the Defence.¹⁰ CSS even asked the Defence to check the original case, but to the Defence’s disappointment, the completed translation does not exist in either case record.¹¹
21. On 19 May 2015, Senior Prosecutor Benjamin Gumpert, QC, raised the issue of interpretations and the need to have interpreters which speak Acholi.¹² The Defence had the same complaint, did not raise the issue as the Prosecution

⁶ By Court Record, the Defence means pleadings, decisions and transcripts.

⁷ See ICC-02/04-01/15-6-tACH, ICC-02/04-01/15-7-tACH and ICC-02/04-01/15-8-tACH.

⁸ Confidential *ex parte* Annex A, pg. 2. By “Article 58 Application”, the Defence refers to ICC-02/04-02/15-3-Conf-Red2.

⁹ See Confidential *ex parte* Annex A, pgs 2-12.

¹⁰ The Defence notes that CSS’s job in relation to translations is to request the service. The office has no control over Language Services Section (‘LSS’). The Defence is grateful for their help and persistence in this matter.

¹¹ Confidential *ex parte* Annex A, pgs 11-12.

¹² ICC-02/04-01/15-T-6-ENG, pgs 24:21-25:24

brought it to the Single Judge's attention. The Single Judge assured the Prosecutor that he would raise the issue with the Registrar.¹³

22. On 3 June 2015, The Single Judge's Legal Officer emailed the Parties, notifying them of the Registrar's answer to the Single Judge's inquiry.¹⁴ From the Registrar's response, interpretation and translation into the Acholi dialect of the Lwo languages should be operational now at a standard expected from an international court.¹⁵ As of today, the Registrar has failed to provide a service befitting of an international court.

23. On 15 June 2015 during a disclosure meeting, Mr Gumpert, QC notified the Defence that the redacted version of the Article 58 Application had been translated *by the Prosecution*. The Prosecution translated the document, not the Registry.

24. On 17 and 20 July 2015, the Assistant to Counsel met with Mr Ongwen at the ICC Detention Centre. The Defence's Case Manager acted as the interpreter for both meetings because of [REDACTED] only interpreter for Acholi in The Hague. Again, there is only one interpreter for Acholi at the seat of the Court.

25. The Defence contacted [REDACTED]
[REDACTED]
[REDACTED]. CSS informed the Defence via telephone that because it was less than 48 hours from the request of the interpreter to the need for interpretation, it would be hard to get an interpreter for [REDACTED] even though it was also unlikely. CSS confirmed [REDACTED] unavailability later that day.

¹³ *Ibid*, pg. 26:12-16.

¹⁴ Annex B.

¹⁵ *Ibid*, pgs 2-3.

26. CSS later informed the Defence via email that:

“LSS is making enquiries as a matter of urgency to establish whether any of the Uganda based interpreters has secured the necessary clearances to provide face-to-face interpretation services, but even if the answer is positive this person would be unlikely to be available in Gulu [REDACTED] at the earliest.”¹⁶

27. The Defence finds it unbelievable that six months after Mr Ongwen was surrendered to the Court, Language Services Section (‘LSS’) cannot inform CSS if there are interpreters cleared for face-to-face field interpretations *in Uganda*. It was not until just after [REDACTED] that a representative from LSS called the Assistant to Counsel to inform him that it was almost a certainty that there was one person certified to conduct face-to-face interpretations, and said person would be in Gulu on [REDACTED] interpret for the Defence.¹⁷

28. The LSS representative assured the Defence that more people were being certified, but could not give an estimated date for their certification. The Defence needs to know that it can rely on LSS to supply field interpreters through the next six months. One certified field interpreter at this time in the proceedings is completely unacceptable. The Registrar needs to release additional funding to finishing the process of certifying more field interpreters.

29. The Registrar is failing his duty to provide translation and interpretation services to Mr Ongwen and his Defence. The Defence cannot think of one viable reason as to why this is happening. The only reason which comes to mind is that the Registrar does not want to spend the money to certify the current applicants, which would not be a valid reason.

¹⁶ Confidential *ex parte* Annex C.

¹⁷ This assumes that the qualifications are in order.

30. Because the Registrar has refused to provide adequate translation and interpretation services for Mr Ongwen and his Defence, as required by Regulation 40(6) and 83(1) of the RoC, Article 67(1)(f) of the Rome Statute and Rule 42 of the Rules of Procedure and Evidence, the Defence requests that the Single Judge order the Registrar to release emergency funds to LSS so it can certify both field interpreters and translators. The Registrar's failure to properly staff LSS is violating Mr Ongwen's rights under Article 64(2) and 67(1)(b) of the Statute.

31. Furthermore, the Defence requests the Single Judge to order the Registrar to release an additional six hundred Euros per month to the Defence so it can hire an independent translator to work on translating public decisions and transcripts of the Court for the benefit of Mr Ongwen.¹⁸

V. RELIEF

32. The Defence respectfully requests that the Single Judge order the Registrar:

- a. To hire more people to translate decisions in the record of the case into Acholi;
- b. To release funds to LSS so it can complete the necessary steps to certify more field interpreters; and
- c. To give the Defence an additional six hundred Euros (€600) per month for the purpose of hiring an outside translator to translate public decision and court transcripts until such time that the Registrar has fulfilled his duty to the Defence and the Court.

¹⁸ See ICC-01/04-01/06-268, pgs 7-8, where the Single Judge in *Lubanga* ordered a permanent interpreter available to the Defence through to the Confirmation Hearing.

Respectfully submitted,



.....

Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 27th day of July, 2020

At Gulu, Uganda