

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-02/06
Date: 23 September 2013

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Single Judge

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

**Public
Urgent**

Observations from the Interpretation and Translation Section

Source: Registry

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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Counsel for the Defence

Marc Desalliers

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

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Detention Section

**Victims Participation and Reparations
Section**

Interpretation and Translation Section

Alexandra Tomic

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The Registrar of the International Criminal Court (the “Court”);

NOTING the “*Decision Establishing a Calendar for Disclosure of Evidence Between the Parties*” (the “Decision establishing a calendar for disclosure”), issued by the Single Judge on 17 May 2013;¹

NOTING the “*Decision on the Prosecution’s Urgent Request to Postpone the Date of the Confirmation Hearing and Setting a New Calendar for the Disclosure of Evidence Between the Parties*” issued by the Single Judge on 17 June 2013;²

NOTING the “*Demande de la Défense aux fins de traduction en kinyarwanda de certains des principaux éléments de preuve*” (the “Request for translation”) submitted by the Defence on 17 September 2013;³

NOTING the “*Decision Requesting Observations from the Interpretation and Translation Section*” (the “Decision requesting observations”), issued by the Single Judge on 19 September 2013;⁴

NOTING articles 50, 61 and 67 of the Rome Statute, rules 42, 76 and 121 of the Rules of Procedure and Evidence, regulation 40 (6) of the Regulations of the Court, and regulations 57 and 72 of the Regulations of the Registry;

CONSIDERING that with regard to the issue of the translation into Kinyarwanda of evidence disclosed by the Prosecutor to the Defence, the Single Judge has ruled that

¹ ICC-01/04-02/06-64.

² ICC-01/04-02/06-73.

³ ICC-01/04-02/06-107.

⁴ ICC-01/04-02/06-110.

the Defence of Mr. Ntaganda may request to the extent necessary the translation of evidence which is core to the preparation of the defence;⁵

CONSIDERING that in its Request for translation, the Defence has requested the translation into Kinyarwanda of the relevant material disclosed by the Prosecution comprising of the testimonies of witnesses P-0016, P-0017, P-0038 and P-0055 given before Trial Chamber I in the proceedings against Mr. Thomas Lubanga Dyilo;⁶

CONSIDERING that in her Decision requesting observations, the Single Judge requests the Interpretation and Translation Section of the Registry to provide a report with observations from the Registry and in particular on the Defence's Request for translation and "*more specifically to indicate to the Chamber an estimate of the amount of days required to translate into Kinyarwanda the evidence referred to by the Defence*", and due to the time required to gather all relevant information the Registry hereby apologises for the delay of the present submission;⁷

RESPECTFULLY REPORTS AS FOLLOWS:

General observations

1. The Registry observes that within the system of *inter partes* disclosure, its main task is to serve as a communication channel between the parties. In the case *The Prosecutor v. Jean-Pierre Bemba Gombo*, Pre-Trial Chamber III held that vis-à-vis the parties, the Chamber considers that the Registry first and foremost has the role of a simple carrier,⁸ and acknowledged that the Registry fulfils a support function for the parties and for the Chamber by facilitating the *rapid*

⁵ See *inter alia*, ICC-01/04-02/06-64, para. 21, ICC-01/04-02/06-73, pages 21-22.

⁶ ICC-01/04-02/06-107, p. 5.

⁷ ICC-01/04-02/06-107, para. 10 and p. 6.

⁸ ICC-01/05-01/08-55, p. 11, para. 34.

access of the Chamber to the evidence exchanged⁹ and by maintaining a record of the proceedings in accordance with rule 15 of the Rules of Procedure and Evidence (the “Rules”) [emphasis added].¹⁰

2. Furthermore, in its *Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties*, and in relation to issues pertaining to translation, Pre-Trial Chamber III further held that ‘pursuant to regulations 57 and 72 of the Regulations of the Registry, the Registry’s responsibility for the official Court translation services enables it to manage any translation problems which may arise between the parties.’¹¹ This has been the practice of the Registry so far.
3. In relation to the translation of evidence within the context of disclosure relating to prosecution witnesses, the Registry observes that according to rule 76(3) of the Rules, ‘the statements of prosecutor witnesses shall be made available in original and in a language which the accused fully understands and speaks’. Accordingly as the transcripts of the testimonies rendered by the Prosecution witnesses in the course of the trial proceedings in the case *The Prosecutor vs. Thomas Lubanga Dyilo* are the statements of the Prosecution witnesses in the present case which forms part of the disclosure made by the Prosecution, the Prosecution is requested by the afore-mentioned rule to provide these statements in a language which Mr. Ntaganda fully understands and speaks, namely Kinyarwanda.
4. This has also been the practice adopted in the case *The Prosecutor vs. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus* in which Trial Chamber IV instructed the Prosecution to translate into Zaghawa the witness statements which it intends upon for the purposes of the trial.¹²

⁹ *Idem*, at p.11, para.35.

¹⁰ *Idem*, at p.12, para.37.

¹¹ *Idem*, at p.12, para.38.

¹² ICC-02/05-03/09-199, page 3.

5. Taking into account the structural set up of the Office of the Prosecutor which includes the Language Services Unit, the Registry asserts that in light of its disclosure obligations, such a Unit is also mandated for the translation of their own evidence materials for the purposed of *inter partes* disclosure and presentation of evidence before the Chamber. The repartition of tasks, namely the Prosecution should undertake to translate evidence and the Registry is mandated to translate judicial decisions and orders, was envisaged during the initial phase when the Court is being established.

6. In terms of the mandate of the Registry in relation to translation, regulation 40(6) of the Regulations of the Court clearly stipulates that within the scope of the languages services to be provided by the Registry, 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* [emphasis added]. According to the afore-mentioned regulation, neither the witness statements nor the hearing transcripts fall in the category of the documents of which the translation should be provided by the Registry. This regulation coincides with rule 76(3) of the Rules. This is also the practice adopted by other international tribunals that the Registry is not tasked to translate hearing transcripts into a language other than the working languages of the tribunals unless there is a need for outreach purpose.

Observations on the defence request and translation into Kinyarwanda

7. The Defence requests the translation into Kinyarwanda of the following documents required for the preparation of the defence:
 - Concernant le témoin P-0016: les pièces DRC-OTP-2054-1538 et DRC-OTP-2054-1703;
 - Concernant le témoin P-0017: les pièces DRC-OTP-2054-2007, DRC-OTP-2054-2192; DRC-OTP-2054-2370 et DRC-OTP-2054-2524;

- Concernant le témoin P-0038: les pièces DRC-OTP-2054-4774 et DRC-OTP-2054-4939;
- Concernant le témoin P-0055: les pièces DRC-OTP-2054-7372, DRC-OTP-2054-7516, DRC-OTP-2054-7697; DRC-OTP-2054-7855 et DRC-OTP-2054-8008.¹³

8. The above items of evidence constitute 1051 pages of translation in total. In this regard, pursuant to the order rendered in the Decision requesting observations, the Registry would like to inform the Single Judge that, should two translators be engaged to work on the translation of this material, it is estimated that 210.2 days would be required to complete draft translations of the above evidential material. 210.2 days entails 42 weeks of five working days, or 35 weeks of six working days (should two translators accept to work on six days a week).
9. The Registry further provides the Single Judge with the following additional information which outlines further implications of the draft translation into Kinyarwanda of the above listed documents. This information is provided in compliance with the Assembly of States Parties' ("ASP") recommendation to the Registry to inform the judges about the financial impact of their decisions. In terms of the cost, at the normal rate of five pages *per* day, the translation of the 1051 pages are estimated to cost €47,295. And at an urgent rate, which means more than five pages *per* day, the estimation is €70,942.

Conclusion

10. Although the Registry is not mandated to translate witness statements, should the Prosecution be unable to translate all or part of the items requested by the Defence, on an exceptional basis upon the request of the Single Judge, the Registry would endeavour to provide assistance to the Prosecution in

¹³ ICC-01/04-02/06-107, p. 4, para. 9.

accordance with its capacity in light of its obligation under rule 20 of the Rules as indicated by the Single Judge.¹⁴

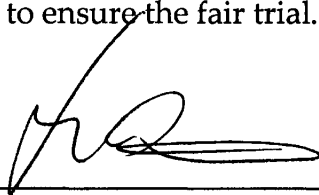
11. The Registry has thus looked into its capacity and submits that translation of the above documents would require outsourcing, therefore due to the very nature of the relevant documents, the Chamber would be required in this case, to grant specific authorisation to outsource the material.
12. In addition, as Mr. Ntaganda voluntarily surrendered himself in March 2013 and only after his surrender did the Registry confirm that Mr. Ntaganda fully understands or speaks Kinyarwanda only, translation of all necessary materials into Kinyarwanda in the present case was thus unforeseen and not budgeted for the year of 2013. Therefore, although the Registry is able to fulfil its obligation to provide translation services as regulated in the Court legal texts, the Registry has not been able to identified available funds in the current appropriation to cover the above-mentioned estimated cost to cover the translation of 1051 pages into Kinyarwanda.
13. Therefore, should the Registry be requested by the Chamber to provide translation assistance to the Prosecution, the Registry stands ready to assist however would request the Prosecution to transfer funds to the Registry pursuant to regulation 4.8 of the Financial Regulations and Rules.¹⁵ The ASP would have to be notified accordingly
14. The Registry would also like to draw the Single Judge's attention to the Defence submission in its Request for translation that *'qu'il ne serait pas*

¹⁴ ICC-01/04-02/06-110, p. 4, para. 9.

¹⁵ Regulation 4.8 of the Financial Regulations and Rules states that no transfer between appropriation sections may be made without authorization by the Assembly of States Parties, unless such a transfer is made necessary by exceptional circumstances, and is in accordance with criteria to be agreed upon by the Assembly of States Parties. The term "appropriation sections" is defined in regulation A.1 in the Resolution ICC-ASP/11/Res.1 which gives the specifications that Major Programme I is the Judiciary, Major Programme II is the Office of the Prosecutor, Major Programme III is the Registry and etc.

*nécessaire de procéder à la traduction des interventions de la Chambre, des parties et des participants survenues lors ces audiences qui n'ont aucun lien direct avec les dépositions des témoins visées par la présente demande.*¹⁶ In light of this Defence submission, the Registry submits that it would be crucial for the Defence to identify exactly what needs to be translated in order to establish the exact number of pages that require translation. This would have the potential of lowering any relevant costs.

15. Lastly, the Registry observes that in the event that the Registry is to assist the Prosecution with the translation of statements of the Prosecution witnesses, it would be essential to the achievement of efficient and quality translation that the Registry and the Prosecution enter into discussion as soon as possible in relation to the modalities of cooperation. Should the Registry be requested to provide translation assistance to certain extent, the Prosecution and the Registry may also take this opportunity to consider the establishment of a framework of cooperation in order to provide each other with assistance if the need arises in order to ensure the fair trial.



Herman von Hebel, Registrar

Dated this 23 September 2013

At The Hague, The Netherlands

¹⁶ ICC-01/04-02/06-107, p. 4, para. 8.