9 Languages and Linguistic Issues before the International Criminal Court

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Abstract
The present article deals with some of the language issues present before the International Criminal Court (ICC). These issues do not simply result from the challenges of translation to/from English and French but also from the fact that the English and French used before the ICC are specialist legal languages with centuries-old practice behind their well-established notions (*e.g.* 'no case to answer'). There are numerous other languages used by witnesses and victims with various backgrounds in the different cases and situations. They are mostly local, sometimes tribal languages often lacking the vocabulary necessary to describe complex legal issues, to deal with notions and phenomena of modern substantive or procedural law. It is equally important to note that there are always special local notions, which are impossible to translate with a single term, sometimes becoming a part of the English or French language of the procedure. Other languages, however, may bring with them their own special legal or historical-legal vocabulary, which must be reflected on in order to unpack its proper meaning. As such, language issues are omnipresent before the ICC, having also an impact on the budget of the Court. The efficient and accurate work of interpreters and translators is of outmost importance from the point of view of fair trial, rights of the accused but also from the perspective of access to information for victims, witnesses or local communities who are following the judicial procedure from home.

9.1 Introduction

Languages play a special role in all international organizations or entities formed inevitably by more than one state as they bring together people coming from different countries with different linguistic backgrounds, with the aim of working for a common cause. There are

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of course some monolingual organizations, in particular those where a common linguistic heritage is at the core of the will for cooperation. However, contemporary international organizations are typically multilingual especially when their ambition is to include as many members as possible.

International organizations incorporating international tribunals – particularly when these tribunals do not or do not only deal with interstate litigation but are vested with powers to adjudicate individuals' criminal charges – traditionally settle language issues (*e.g.* official languages, language parities in different bodies or main functions) using rules linked to the rights of the accused and other aspects of fair trial. Nevertheless, there are always issues which cannot be settled well in advance: questions, problems and challenges may emerge as a consequence of the particulars of a given situation or case.

Since my paper is much more centered on languages than law, I ask the readers' indulgence for the brief references on jurisprudence and at the same time, for the extensive references on information sheets published by the ICC, especially when I report on ongoing procedures. I tried to find open access and encyclopedia-type references on the different languages or special military terminology *etc.* that may be unknown to the reader, or with which they are not precisely known to the reader. Following a short presentation of the regulation of language issues in the Rome Statute of the ICC, some real problems, difficulties and challenges of linguistic nature will be examined.

9.2 Language Regime of the Rome Statute

As mentioned above, there are some typical language issues which should always be settled within a multilingual organization. The Rome Statute was no exception.

That's why beside the general rule on the six official languages (*i.e.* Arabic, Chinese, English, French, Russian and Spanish)[1] out of which two (English and French)[2] are the

1 Article 50(1) of the Rome Statute: "The official languages of the Court shall be Arabic, Chinese, English, French, Russian and Spanish. The judgements of the Court, as well as other decisions resolving fundamental issues before the Court, shall be published in the official languages. The Presidency shall, in accordance with the criteria established by the Rules of Procedure and Evidence, determine which decisions may be considered as resolving fundamental issues for the purposes of this paragraph."

2 Article 50(2) of the Rome Statute: "The working languages of the Court shall be English and French. The Rules of Procedure and Evidence shall determine the cases in which other official languages may be used as working languages." The Rules of Procedure and Evidence in its Rule 41 stipulates: "Working languages of the Court 1. For the purposes of article 50, paragraph 2, the Presidency shall authorize the use of an official language of the Court as a working language when: *(a)* That language is understood and spoken by the majority of those involved in a case before the Court and any of the participants in the proceedings so requests; or *(b)* The Prosecutor and the defence so request. 2. The Presidency may authorize the use of an official language of the Court as a working language if it considers that it would facilitate the efficiency of the proceedings." According to Rule 42 of the Rules of Procedure and Evidence: "The Court shall arrange

working languages of the Court, some special rules were inserted in articles dealing with the Assembly of States Parties.[3] Language criteria are mentioned in articles dealing with candidacy for the position of Judge,[4] Prosecutor and Deputy-Prosecutor,[5] Registrar and Deputy-Registrar.[6] Although the Rome Statute does not explicitly mention this requirement in respect of the staff, fluency in the working languages is definitely required.[7]

Fair trial related language rules show similarities with national criminal procedural law rules, *i.e.* provisions governing the rights of person under investigation[8] and the rights of the accused.[9] These rules complete the provision requiring the judges to determine the language(s) of the procedure.[10]

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for the translation and interpretation services necessary to ensure the implementation of its obligations under the Statute and the Rules."

3 Article 112(10) of the Rome Statute: "The official and working languages of the Assembly shall be those of the General Assembly of the United Nations." These are (since 1983) the same six languages, *i.e.* contrary to the Court's working languages, Arabic, Chinese, English, French, Russian, and Spanish are legally on equal footing.

4 Article 36(3)(c) of the Rome Statute: "Every candidate for election to the Court shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court."

5 Article 42(3) of the Rome Statute: "The Prosecutor and the Deputy Prosecutors shall be persons of high moral character, be highly competent in and have extensive practical experience in the prosecution or trial of criminal cases. They shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court."

6 Article 43(3) of the Rome Statute: "The Registrar and the Deputy Registrar shall be persons of high moral character, be highly competent and have an excellent knowledge of and be fluent in at least one of the working languages of the Court."

7 Article 44 of the Rome Statute: "(1) The Prosecutor and the Registrar shall appoint such qualified staff as may be required to their respective offices. In the case of the Prosecutor, this shall include the appointment of investigators. (2) In the employment of staff, the Prosecutor and the Registrar shall ensure the highest standards of efficiency, competency and integrity, and shall have regard, *mutatis mutandis*, to the criteria set forth in article 36, paragraph 8." *Nota bene*: Article 36(8) deals however with different aspect of the equitable representation. But I think that there is no doubt that the words on "qualified", "efficiency", "competency" cover adequately the linguistic knowledge, even if the primacy of the English is manifest.

8 Article 55(1) of the Rome Statute: "In respect of an investigation under this Statute, a person: […] *(c)* Shall, if questioned in a language other than a language the person fully understands and speaks, have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness;"

9 Article 67(1) of the Rome Statute: "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: *(a)* To be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks; […] *(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; […]"

10 Article 64(3) of the Rome Statute: "Upon assignment of a case for trial in accordance with this Statute, the Trial Chamber assigned to deal with the case shall: […] *(b)* Determine the language or languages to be used at trial; and […]"

The third type of language rules is related to the cooperation between the ICC and the states and with special regard to the documents of judicial assistance.[11]

9.3 Language Issues in Practice

9.3.1 *English as Common Law English?*

Two of the official languages, *i.e.* English and French, which are also qualified as working languages, bring up now and then classical problems of interpretation in the same way as in any other fields of international law. As it is well known, the main part of the drafting of the Rome Statute was done in English.

Two of the most widely used commentaries[12] are in English, the third one is in French, with the English commentaries being more detailed. This also contributes to a more accentuated presence of English as compared to what was originally expected in Rome. Moreover, English means legal English *i.e.* the impact of common law terminology, sometimes in UK, sometimes in US terms. It is true that as to the Rome Statute and other norms, the use of "specific common law terminology […] was, as in other parts of the ICC legal regime, deliberately avoided, in order not to prejudge the procedural approach to be taken."[13] Others claim, nevertheless, that depending on chambers, it is very well present in practice

> "although in cases against Mr. Bemba and Mr. Lubanga Trial Chambers preferred using neutral terms, in *The Prosecutor v. Katanga and Ngudjolo*, the ICC did formally adopt the traditional common law terminology."[14]

11 Article 87(2) of the Rome Statute: "Requests for cooperation and any documents supporting the request shall either be in or be accompanied by a translation into an official language of the requested State or one of the working languages of the Court, in accordance with the choice made by that State upon ratification, acceptance, approval or accession." Article 99(3) of the Rome Statute: "Replies from the requested State shall be transmitted in their original language and form." *Nota bene*: the title of the article refers to the so called "other forms of cooperation", *i.e.* other than arrest, provisional arrest, surrender, extradition.

12 Otto Triffterer *et al.* (eds.), *The Rome Statute of the International Criminal Court – A Commentary*, Nomos, 2016; Mark Klamberg (ed.), *Commentary on the Law of the International Criminal Court*, at www.casematrixnetwork.org/cmn-knowledge-hub/icc-commentary-clicc/; Julian Fernandez & Xavier Pacreau (eds.), *Statut de Rome de la Cour pénale internationale*, Pédone, 2012.

13 Ambos Kai, *Treatise on International Criminal Law: Procedure, Cooperation and Implementation*, Oxford University Press, 2016, p. 465.

14 Powers of the Prosecutor Before the Trial Chamber, at https://lawexplores.com/powers-of-the-prosecutor-before-the-trial-chamber/#Fn96.

It is clear that the text of the decisions prepared in English contain plenty of common law terms or formulas stemming from the judicial practice.[15] An example for this phenomenon would be the *'no case to answer' motion, which was accepted after certain hesitation as belonging under* the umbrella of the general principles of law mentioned as an element of the "applicable law".[16] While civil law also knows the legal concept of the prosecutor dropping the charges or the indictee's acquittal for lack of adequate and/or sufficient evidence necessary for a conviction beyond reasonable doubt, common law grants a legal possibility to the defence to "provoke" acquittal (or the discontinuation of the case) even during the presentation of the Prosecutor's case (*i.e.* before opening the defence's case) if the submitted evidence seems insufficient for a conviction.

Applied effectively in the case *The Prosecutor v. Ruto,*[17] but rejected in the case *The Prosecutor v. Bosco Ntaganda*, the concept of 'no case to answer' was explained by the Appeals Chamber in as follows:

> "the Court's legal texts do not expressly provide for a 'no case to answer' procedure. Moreover, the Appeals Chamber is not aware of any proposals made or discussions held during the drafting of the Statute or the Rules of Procedure and Evidence ("Rules") in relation to such a procedure. […] Nevertheless, in the view of the Appeals Chamber, a 'no case to answer' procedure is not inherently incompatible with the legal framework of the Court. […] A decision on whether or not to conduct a 'no case to answer' procedure is thus discretionary in nature and must be exercised on a case-by-case basis in a manner that ensures that the trial proceedings are fair and expeditious pursuant to article 64(2) and 64(3)(a) of the Statute."[18]

15 "Pre-trial brief"; "appeal brief"; "requested remedies"; "admissibility challenge"; "the request for a leave to appeal is granted"; "a good cause is shown"; "failed to raise any new factual grounds"; "it is not an appealable issue"; "it does not warrant an immediate solution"; "the submission failed to demonstrate the impact of alleged errors on […]"; *etc.*

16 Article 21(1) of the Rome Statute: "The Court shall apply: *(a)* In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence; *(b)* In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict; *(c)* Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards. […]".

17 *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, ICC-01/09-01/11, Questions and answers arising from the decision of no-case to answer in the case of *The Prosecutor v. Ruto and Sang*, at www.icc-cpi.int/iccdocs/PIDS/publications/EN-QandA-Ruto.pdf.

18 *The Prosecutor v. Bosco Ntaganda*, OA6 Judgment, ICC-01/04-02/06-2026, paras. 43-44.

This example of the presence of common law within the jurisprudence of the ICC, a topic researched in abundance by scholars[19] was merely cited to demonstrate that what is already a challenge for lawyers, *i.e.* to understand for legal concepts, is an even bigger challenge for interpreters. As Ludmila Stern puts it, "[t]he interpreter and translator must therefore find the means of overcoming the lack of lexical equivalents for legal practices that are articulated differently in other systems."[20] As Leigh Swigart notes,

> "[t]he need to accommodate both English and French speakers also raises some interesting linguistic phenomena. The mixing of elements in international criminal courts and tribunals from different legal systems and trial procedures has necessitated the creation of terms in working languages that did not previously exist."[21]

If harmonizing legal English and legal French seems difficult, the situation is even more complicated when small, local languages are involved, as we will see infra. Prieto Ramos rightly states that

> "at the ICC, the most challenging terminological difficulties arise precisely in the translation of less or non-standardized languages used by testifying witnesses to whom concepts such as 'victim' are unknown."[22]

19 *See e.g.* Gilbert Bitti, 'Two Bones of Contention Between Civil Law and Common Law. The Record of the Proceedings and the Treatment of Concursus Delictorum', *in* Horst Fischer *et al.* (eds.), *International and National Prosecution, BWV Berliner-Wissenschaft*, 2001, pp. 273-283; Robert Christensen, 'Getting to Peace by Reconciling Notions of Justice: The Importance of Considering Discrepancies between Civil and Common Legal Systems in the Formation of the International Criminal Court', *UCLA Journal of International Law and Foreign Affairs*, Vol. 6, Issue 2, 2001-2002, pp. 391-424; Colin B. Picker, 'International Law's Mixed Heritage: A Common/Civil Law Jurisdiction', *Vanderbilt Journal of Transnational Law*, Vol. 41, 2008, pp. 1083-1140; Salvador Guerrerdo Palomares, 'Common and Civil Law Traditions on Victims' Participation at the ICC', *International Journal of Procedural Law*, Vol. 4, Issue 2, 2014, pp. 217-235.

20 Ludmila Stern, 'Interpreting Legal Language at the International Criminal Tribunal for the Former Yugoslavia: Overcoming the Lack of Lexical Equivalents', *The Journal of Specialised Translation*, Issue 2, July 2004, p. 63.

21 Leigh Swigart, 'Linguistic and Cultural Diversity in International Criminal Justice: Toward Bridging the Divide', *University of the Pacific Law Review*, Vol. 48, Issue 2, 2016.

22 Fernando Prieto Ramos, 'International and Supranational Law in Translation: from Multilingual Lawmaking to Adjudication', *The Translator*, Vol. 20, Issue 3, 2014, p. 320.

9.3.2 *Local Languages in the Ituri District of the Democratic Republic of Congo and the ICC*

The latent conflict between Hema,[23] Lendu[24] and Ngiti[25] communities turned into a bloody civil war around 2000. Thomas Lubanga's conviction[26] for enlisting and using child soldiers and Germain Katanga's conviction[27] for his assistance in the massacre of the inhabitants of Bogoro village, as well as the trial against Bosco Ntaganda were rooted in these conflicts.[28]

The transcription of local names, war names and toponyms into English or French meant a minor challenge (*i.e.* whether the very similar but not identical forms cover the same person or two persons, different places) during the trial as well as during the reparation phase, but as always, the real difficulty was that sometimes the oral testimony of a witness during the trial was not as precise as, or even completely different from that registered years before, during the contacts established with them by the investigators or experts working on the reparations.[29] All in all, the concrete elements in a victim's narrative, recalling of names of commanders, localities of military engagement *etc.* played an important role in the assessment of the eligibility for reparation.[30] These elements had to be recorded in documents written by lawyers, national or international collaborators devoted to the task of fighting against impunity and for granting justice and reparation to victims. However, they were not necessarily trained to provide the proper transcription of an orally communicated geographical or personal name while putting into writing what the person providing testimony – without or with only a very rudimentary knowledge of

23 On the Hema language, *see* William Frawley, *International Encyclopedia of Linguistics, Volume 1*, Oxford University Press, 2003, p. 302.

24 On the Lendu language: Id. p. 302.

25 On the Ngiti language: Id. p. 304.

26 *See* www.icc-cpi.int/CaseInformationSheets/LubangaEng.pdf.

27 *See* www.icc-cpi.int/CaseInformationSheets/KatangaEng.pdf.

28 *See* www.icc-cpi.int/CaseInformationSheets/NtagandaEng.pdf.

29 *See* on that issue the summary of the defence's remarks (in para. 60 with a number of examples in footnotes) and the Trial Chamber II considerations (in para. 64) in the *Lubanga* reparation order. "60. […] The Defence also points to contradictions and inconsistencies in the accounts of some potentially eligible victims regarding the circumstances of their enlistment, in particular to contradictions between participation forms and reparations forms or between reparations forms completed on different dates."; "64. […] In that connection, it is of note that in *Katanga* the Chamber considered – as have other Chambers of this Court in relation to applications for participation – that the mere fact that an application for reparations contains slight discrepancies does not, on the face of it, cast doubt on its credibility.", at www.icc-cpi.int/Pages/record.aspx?docNo=ICC-01/04-01/06-3379-Red.

30 "64. The Chamber pays particular attention to the level of detail of the facts described, including the circumstances of enlistment, the positions held, and duties performed in the UPC/FPLC, the living conditions in the militia and the circumstances in which the victim left the UPC/FPLC. The Chamber also looks at references to relevant information, such as the activities connected to child-soldier status, the sites of recruitment, training, deployment (including battlefields) and demobilization, the names of superiors in the UPC/FPLC militia, and the organizations responsible for demobilization. […]", at www.icc-cpi.int/Pages/record.aspx?docNo=ICC-01/04-01/06-3379-Red.

French – told them. Of course, interpreters helped facilitate communication in order to guarantee the highest possible precision in the documentation.

The other side of the coin is the assessment of the language skills of the person under trial. As I cited during the presentation of the legal framework, the person under arrest or under trial definitely enjoys linguistic assistance needed. (On the other hand, the choice between full or partial translation into working languages may be linked to the relevance of the item.[31]) The Court's practice may be considered to be in conformity with the standard set by international human rights' jurisprudence.[32] It is worth noting that in the Katanga trial – in the phase of deciding the applicable sentence – the Prosecutor submitted that the simultaneous interpretation into Lingala – granted on the indictee's demand – was not really necessary and this should be taken into consideration when assessing Katanga's cooperation with the Court.[33] However, apparently, the Court did not react to this submission.

9.3.3 *Acholi and Other Traditional Languages of Northern Uganda before the ICC*

One of the cases currently under trial –in which I am sitting as judge – is *The Prosecutor v. Dominic Ongwen*. The person charged – himself abducted as a child – is alleged to be one of the military leaders of the Lord's Resistance Army fighting in the Northern part of Uganda against government forces. At the time of writing this article, the evidentiary proceedings in this case are still ongoing.

In the regions concerned, a good part of the local population, especially those whose schooling was interrupted by armed conflict, abduction or as a result of their parents' poverty do not speak English (or at least no fluent English). Instead, they speak different

31 "9. Conversely, whilst the statutory instruments do not make it mandatory for the Prosecutor to provide translation of disclosed evidence into one of the working languages of the Court, the need for translation into a working language of the Court does indeed arise in respect of any portion of evidentiary item which is relevant to the nature, cause and content of the charges and upon which the Prosecutor intends to rely for the purposes of the confirmation hearing and will therefore include in her list of evidence. Those items will form the basis for the Chamber's determination on the charges brought by the Prosecutor and must therefore be submitted in a working language of the Court." *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, Decision on the "Defence request for an order requiring the translation of evidence", ICC-01/05-01/13-177, at www.icc-cpi.int/Pages/record.aspx?docNo=ICC-01/05-01/13-177.

32 *See* in detail in Triffterer (ed.) 2016, in comments made by William A. Schabas and Yvonne McDermott, pp. 1661 and 1672.

33 "The Prosecution denounced the behavior of the convicted person in that he insisted on *Lingala* interpretation throughout proceedings at both the preliminary and the trial stages, whereas, in due course, he chose to testify in French, showing perfect mastery of the French language.", at www.icc-cpi.int/CourtRecords/CR2015_19319.PDF.

local languages, like Acholi,[34] Luo[35] (some consider the first to be a dialect of the second), Lango,[36] Swahili[37] *etc.* Since Mr. Ongwen only fully understands and speaks Acholi, translation services had to be secured for him in this language. Acholi courtroom interpreters also translate the statements of many of the witnesses who have testified in the case.

The Prosecutor attributes great importance to the intercepted radio communications which have allegedly taken place between Joseph Kony, LRA leaders and the different commanders. Without making any comment on the authenticity or contents of these communications, it is noted that they have to be accurately translated into English in order to be understood by the Chamber. The speakers in these recordings may not be using standard language, noting that evidence has been received that LRA communications in Acholi were filled with regularly changing coded expressions and coded names in order to prevent the Ugandan army and police from understanding the communicated messages, orders and reports. Evidence has also been received on the work done by intelligence and radio experts of the Ugandan authorities to break these codes.

Such language services presuppose not only the establishment of a network of professional Ugandan Acholi interpreters and translators,[38] but also require sufficient time and resources required for providing high-quality simultaneous translation in a complex legal case where the Acholi language does not always have clear terms to convey legal notions used at the ICC. Some difficulties can be overcome, for example, by using explanations and paraphrases. The correct transposition of toponyms, tribal names and military aliases is also problematic. The difficulties or possible mistakes which occurred at the time statements were put into writing in English are corrected when the so-called real-time trial transcript is reworked into an 'edited transcript'. Parties may also request corrections to edited transcripts.[39]

Some local words have become widely used orally even in the English translation of the trial, such as "*lapwony*" (*i.e.* meaning literally "teacher" but witnesses explained that it is much rather used as 'comrade', referring to fellow LRA soldiers, adding this designation to their names or nicknames). Other examples include "*ting-ting*" (*i.e.* described as an abducted girl living and working in the household of the commandants), "*dog adaki*" (*i.e.* described as the guarded area surrounding the commanders' living quarters). The word "*kadogo*" (described by witnesses as referring to child soldiers) is used in Uganda and other

34 On the Acholi language, *see* Frawley 2003, p. 495.
35 On the Luo language: Id. p. 498.
36 On the Lango language: Id. p. 497-498.
37 On the Swahili language: Id. p. 181.
38 *See* on the methods of recruitment and training: Swigart 2016, p. 9.
39 Initial Directions on the Conduct of the Proceedings, 13 July 2016, ICC-02/04-01/15-497, para. 38, at www.legal-tools.org/doc/60d63f/.

African countries. Once their meaning is clarified and thoroughly understood, it is easier for participants of the trial to use these exact words instead of taking recourse to paraphrases or simplifying the meaning of the expression.

It is clear that even in testimonies rendered in Acholi, words belonging to the English military vocabulary (*e.g.* battalion, brigade, recoilless,[40] LMG[41]) or Russian military terms (*e.g.* PK,[42] AK,[43] RPG[44]) as absorbed in military English are recognizable, especially when reference is made to different weapons.

Even if the word "barracks" is often mentioned in the context of certain charged attacks,[45] the reader of this article should understand it in the local meaning *i.e.* as a quantity of small ground huts, surrounded by trenches and barbed wire with some observation posts, rather than dwellings of considerable size with large fortifications.

9.3.4 Arabic and Traditional Languages of Mali before the ICC

Ahmad Al Faqi Al Mahdi[46] was charged by the Prosecutor and convicted under a guilty plea by Trial Chamber VIII for the crime of destruction of cultural monuments committed in 2012 in Timbuktu. The Prosecutor also submitted different charges against Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud.[47] Both of them chose Arabic as the language in which they would like to be informed regarding the charges,[48] but some other languages, namely Tamasheq[49] or Songhay[50] and Bambara[51] also played an important role in the procedure.

40 *See* www.encyclopedia.com/social-sciences-and-law/political-science-and-government/military-affairs-nonnaval/recoilless-rifle.
41 *See* www.weaponslaw.org/weapons/light-machine-gun.
42 *See* https://modernfirearms.net/en/machineguns/russia-machineguns/pk-pks-pkm-pkms-eng/.
43 *See* www.warhistoryonline.com/guns/14-facts-ak-47.html.
44 *See* https://modernfirearms.net/en/grenade-launchers/russia-grenade-launchers/rpg-7-eng/.
45 Namely against the villages of Abok, Lukodi, Pajule and Odek.
46 *See* www.icc-cpi.int/CourtRecords/CR2016_07244.PDF. *See* the overview at www.icc-cpi.int/CaseInformationSheets/Al-MahdiEng.pdf.
47 *See* the overview at www.icc-cpi.int/CaseInformationSheets/al-hassanEng.pdf.
48 Decision on the Defence Request for an Arabic Translation of the Prosecution, *Application for the Issuance of a Warrant of Arrest*, ICC-01/12-01/18-42-tENG, at www.icc-cpi.int/CourtRecords/CR2018_04122.PDF, paras. 5, 9 and 13.
49 On the Tamasheq language, *see* Frawley 2003, p. 222.
50 On the Songhay language: Id. p. 110.
51 On the Bambara language: Id. p. 198.

The latter languages are used *inter alia* during consultations[52] with a good number of victims and to help them with their application for participation in the procedure[53] *etc.* Because many of the victims do not speak Arabic, a considerable number of witness statements were deposited in Tamasheq and Songhay. In order to render the apology formulated in Arabic by Mr. Al Faqi accessible to as many people as possible in Mali, versions in Bambara, Songhay and Tamasheq were also prepared and put on the homepage of the ICC.[54] As a result, people speaking Tamasheq, Songhay and Bambara had to be engaged[55] with all its direct consequences for the budget.[56]

As far as Arabic is concerned, it is to be noted that the transcription of the same Arabic first and family names and geographical names into English and French respectively often results in slightly different forms and not only in the form of "sh" in English and "ch" in French. Moreover, despite scholarly articles[57] written on this subject, when the transposition of a name is made *e.g.* by a local lawyer while typing up his client's testimony, it can happen that the transposition is not always *lege artis*.

And as always, the issues of names, surnames, patronyms *etc.* emerge, written sometimes according to Arabic (*e.g.* Mohamed ibn Hussayn) and elsewhere according to Tamasheq (as Mohamed Ag Hussayn) but referring to the same person when this can be established from the details of an individual's narrative.[58]

All this does not mean a major difficulty but certainly requires continuous attention on behalf of the legal staff of the ICC.

If there is such a thing as legal English, there certainly exists Arabic legal language too, which, moreover, is often intertwined with Islam. Because the introduction of *Sharia* in Timbuktu with such punishments like flogging (qualified by the Prosecutor as torture) or alleged forced marriages (understood as sexual slavery) played an important part already

52 Public redacted version of "Annex to the Registry's Joint Report on Outreach and Other Victim Related Issues", 27 July 2018, ICC-01/12-01/18-102-Conf-Exp-Anx, at www.icc-cpi.int/Pages/record.aspx?docNo=ICC-01/12-01/18-102-Anx-Red.

53 *See* www.icc-cpi.int/mali/al-hassan, www.icc-cpi.int/itemsDocuments/alHassan/2018-alHassanAppFormInd_TAQ.pdf, www.icc-cpi.int/itemsDocuments/alHassan/2018-alHassanAppFormORG_TAQ.pdf, www.icc-cpi.int/itemsDocuments/alHassan/2018-alHassan-AppForm-Guidelines_TAQ.pdf, www.icc-cpi.int/itemsDocuments/alHassan/2018-alHassan-AppForm-Guidelines_Organizations_TAQ.pdf.

54 *See* www.icc-cpi.int/mali/al-mahdi.

55 On the recruitment aspects, *see* on the ICC's homepage under "Career Opportunities: Freelance Transcriber – Bambara, Fulfulde, Hassaniyya, Songhay or Tamasheq (18761)", at www.icc-cpi.int/jobs/pages/vacancies.aspx.

56 *See* para. 119. of the Proposed Program Budget for 2018 of the ICC, at https://asp.icc-cpi.int/iccdocs/asp_docs/ASP16/ICC-ASP-16-10-ENG.pdf.

57 Houda Saadane & Nasredine Semmar, 'Transcription des noms arabes en écriture latine', *Revue RIST*, Vol. 20, Issue 2, 2013, pp. 57-68.

58 These names are featured in the present article only as fictitious examples.

in the request for an arrest warrant[59] granted by the Pre-Trial Chamber,[60] one may assume that the Arabic concepts of criminal law, criminal procedural law and family law will play a certain role in the procedure. Moreover, these legal terms are often filled with notions and formulas of the *Quran*.

All these challenges can be managed and dealt with, but they require time, skills, continuous attention and knowledge, and all in all, do not make the job of legal officers working for the Prosecution or the Judiciary easier.

It is to be noted that the Defence asked also in the *Al Mahdi* and in the *Al Hassan* cases – based on Article 50(2) and (3) (pre-cited) of the Rome Statute – to use Arabic as well as a language in which oral submissions can be made by the legal counsel of the person charged. The request was granted in the first case,[61] but the Presidency dismissed it in the second, as improperly submitted, *i.e.* directly before the Presidency and not before the relevant chamber.[62]

59 Version publique expurgée de la "Requête urgente du Bureau du Procureur aux fins de délivrance d'un mandat d'arrêt et de demande d'arrestation provisoire à l'encontre de M. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud", 20 mars 2018, ICC-01/12-01/18-1-Red, at www.icc-cpi.int/Pages/record.aspx?docNo=ICC-01/12-01/18-1-Red. (There is no English translation for this document.)

60 "60. The material submitted by the Prosecutor further shows that there was a defined policy to attack the civilian population. The policy was defined in that the armed groups wished to impose their authority and their new religious order. The policy followed a regular pattern in that it involved strict rules, prohibitions and punishments and was calculated to oppress anyone who failed to demonstrate the required religiosity, in particular women and girls. […]" (footnotes omitted). "70. The Prosecutor submits that there are reasonable grounds to believe that the members of the armed groups Ansar Dine and AQIM committed crimes against humanity of acts of torture. The Prosecutor refers to several methods of interrogation, physical violence and other brutal sanctions allegedly constituting cases of torture. The Prosecutor alleges that, in some cases, violations of the new rules by the population were referred to the Islamic court, which then ordered physical punishments, such as whipping in public." (footnotes omitted). "81. The Prosecutor submits that there are reasonable grounds to believe that women and girls in Timbuktu were forced to marry members of Ansar Dine and AQIM. The Prosecutor alleges that, although the families of the victims generally received a dowry in exchange, they were not free to object to the members' wishes and were either forced to submit or did so out of fear of retaliation. The Prosecutor alleges that the purpose of these marriages was to legitimize the rapes and sexual violence perpetrated against the victims by the members of the armed groups, and to integrate the members of the armed groups into the population. As noted above, the Prosecutor alleges that about forty cases of rape, sexual slavery and other sexual violence took place in the context of forced marriage." (footnotes omitted). Decision on the Prosecutor's Application for the Issuance of a Warrant of Arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud ICC-01/12-01/18-35-Red2-tENG, at www.icc-cpi.int/Pages/record.aspx?docNo=ICC-01/12-01/18-35-Red2-tENG.

61 *See* the reference in Defence request to authorize the use of Arabic as a working language, ICC-01/12-01/18-268 08-03-2019, at www.icc-cpi.int/CourtRecords/CR2019_01335.PDF, para. 7.

62 Decision on the admissibility of the "Defence request to authorize the use of Arabic as a working language", ICC-01/12-01/18-302 04-04-2019, at www.icc-cpi.int/CourtRecords/CR2019_01895.PDF, especially paras. 17-19.

9.4 By Way of Conclusion

The ICC has on its table other situations under investigation involving several other languages (*e.g.* Georgian, Russian and possibly[63] also Ossetian[64] in the so called Georgian situation[65]) and there are situations under preliminary-examination such as the Rohingyas case[66] involving a language[67] which is spoken exclusively by most of the victims *etc.* All these have their special difficulties, challenges, as well as legal and, last but not least, budgetary implications.

My ambition in the present contribution was not to give a comprehensive legal analysis but only to highlight some points which deserve a proper attention and may invite further research, similarly to research published on the language issues before the ICTY, ICTR or the STSL.[68]

It is worth studying the linguistic challenges that the ICC faces and these cannot be restricted only to the relationship of English and French in the Rome Statute and in the jurisprudence of the Court.

63 Due to South Ossetia's past since 1801 in Czarist Russia and then in the Soviet Union (at that time a so-called autonomous territory within the Georgian Soviet Socialist Republic), Russian can be considered a *lingua franca* for the inhabitants of this territory.

64 On the Ossetian language, *see* the *Worldmark Encyclopedia of Cultures and Daily Life*, Cengage Learning, 2009, at www.encyclopedia.com/humanities/encyclopedias-almanacs-transcripts-and-maps/ossetians.

65 *See* www.icc-cpi.int/georgia. On the recruitment aspects, *see* on the ICC's homepage under "Career Opportunities: Freelance Transcriber – Georgian, Ossetian or Russian (18759)", at www.icc-cpi.int/jobs/pages/vacancies.aspx.

66 *See* www.icc-cpi.int/rohingya-myanmar.

67 On the Rohingya language, *see* the Worldmark Encyclopedia 2009, www.encyclopedia.com/humanities/encyclopedias-almanacs-transcripts-and-maps/rohingyas.

68 Stern 2004, pp. 63-75; Swigart 2016, pp. 1-16, covering not only the International Criminal Tribunal for Yugoslavia (ICTY), but also the lessons learned from the practice of the International Criminal Tribunal for Rwanda (ICTR), the Special Tribunal for Sierra Leone (STSL) and the Extraordinary Chambers in the Courts of Cambodia (ECCC).