



Original: **English**

No.: **ICC-01/12-01/18**

Date: **4 April 2019**

THE PRESIDENCY

Before: Judge Chile Eboe-Osuji, President
Judge Robert Fremr, First Vice-President
Judge Marc Perrin de Brichambaut, Second Vice-President

SITUATION IN THE REPUBLIC OF MALI

IN THE CASE OF
THE PROSECUTOR V. AL HASSAN AG ABDOUL AZIZ AG MOHAMED AG
MAHMOUD

Public

Decision on the admissibility of the ‘Defence request to authorise the use of Arabic as a working language’ (ICC-01/12-01/18-268)

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

The Office of the Prosecutor
Ms Fatou Bensouda
Mr James Stewart

Defence
Mr Yasser Hassan

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**

States Representatives

Others

REGISTRY

Registrar
Mr Peter Lewis

Counsel Support Section

Victims and Witness Unit

Detention Section

**Victims Participation and Reparations
Section**

Others
Pre-Trial Chamber I

The Presidency of the International Criminal Court (the ‘Court’) has before it the request of the Defence for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (the ‘Defence’) dated 8 March 2019 (the ‘Request’), for the authorisation to use Arabic as a working language in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* (the ‘Al Hassan case’).

The Request is dismissed.

I. PROCEDURAL HISTORY

1. On 8 March 2019, the Defence submitted the Request to the Presidency seeking the authorisation to use Arabic as a working language for oral submissions before the Court in the *Al Hassan* case pursuant to article 50 of the Rome Statute (the ‘Statute’) and rule 41 of the Rules of Procedure and Evidence (the ‘Rules’).¹
2. On 19 March 2019, the Prosecution filed its reply to the Defence’s Request, submitting that the present Request should be dismissed *in limine* or otherwise denied on the merits.²

II. RELEVANT PROVISIONS

3. The Presidency notes article 50 of the Statute, which provides, in the relevant part:

Article 50

Official and working languages

[...]

2. The working languages of the Court shall be English and French. The Rules of Evidence and Procedure shall determine the cases in which other official languages may be used as working languages.

3. At the request of any party to a proceeding or a State allowed to intervene in a proceeding, the Court shall authorize a language other than English or French to be used by such a party or State, provided that the Court considers such authorization to be adequately justified.

4. With regard to the circumstances under which an official language can be authorised as a working language of the Court pursuant to article 50(2) of the Statute, rule 41 of the Rules shall apply. Rule 41 of the Rules provides:

¹ ‘Defence request to authorise the use of Arabic as a working language’, ICC-01/12-01/18-268.

² ‘Prosecution’s response to Defence request to authorise the use of Arabic as a working language’, ICC-01/12-01/18-285.

Rule 41**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 request; 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.

5. Regulation 39(3) of the Regulations of Court (the ‘Regulations’) provides:

Regulation 39**Language requirements**

[...]

3. When a Chamber, in accordance with article 50, paragraph 3, and following consultation with the Registrar, authorises use by a participant of a language other than English or French, the expenses for interpretation and translation shall be borne by the Court.

III. SUBMISSIONS*1. The Request*

6. The Defence submits that the Request is ‘justified by a number of factors’ including: ‘Mr Al Hassan wishes that his Defence Counsel uses the Arabic language in oral proceedings before the Court; Mr Al Hassan does not speak or understand English, while his capacities in French are limited; Mr Al Hassan wants to fully engage with the proceedings, as much as possible without the need for interpretation; The Arab tribes of Northern Mali, as well as the Tuareg population in and around Mali speak Arabic rather than French or English and would benefit from being able to follow the case in a language they fully understand, without the need for interpretation; The publicity of hearings is an essential part of a fair trial, which is in the present case, extends to the neighbouring countries that were affected by the events in Mali, including Algeria and Mauritania.’³

³ ICC-01/12-01/18-268, para. 4.

7. The Defence contends that ‘allowing the use of Arabic as a working language would also facilitate the efficiency of the proceedings’⁴ and that ‘the impact on proceedings would be minimal’.⁵
8. The Defence notes that Arabic was used in the *Al Mahdi* case and submits that ‘no circumstances differentiate the present case from the *Al Mahdi* precedent in terms of using Arabic as a working language’.⁶
9. The Defence further submits that the Request is ‘limited to oral submissions. Written submissions will continue to be submitted in English’.⁷
10. Finally, the Defence submits that the Request is ‘adequately justified and necessary to enable Mr Al Hassan to exercise his right to a fair trial and to fully and promptly understand in detail the nature, cause and content of the allegations made against him’.⁸

2. Response

11. The Prosecution submits that the Request should be rejected *in limine* as the Request ‘does not fall within the competence of the Presidency pursuant to article 50(2) of the Statute and rule 41 or the Rules’.⁹ The Prosecution contends that the Request is for authorisation for the *partial* use of another language in the proceedings and therefore falls within the Pre-Trial Chamber’s authority pursuant to article 50(3) of the Statute and regulation 39(3) of the Regulations.¹⁰
12. The Prosecution notes that the Request does not satisfy any of the criteria provided for in rule 41. The Prosecution submits that first, Arabic is not a language spoken by the majority of those involved in the case, and second, using Arabic would not facilitate the efficiency of the proceedings.¹¹

⁴ ICC-01/12-01/18-268, para. 8.

⁵ ICC-01/12-01/18-268, para. 9.

⁶ ICC-01/12-01/18-268, para. 7.

⁷ ICC-01/12-01/18-268, para. 9.

⁸ ICC-01/12-01/18-268, para. 10.

⁹ ICC-01/12-01/18-285, para. 6.

¹⁰ ICC-01/12-01/18-285, para. 9.

¹¹ ICC-01/12-01/18-285, para. 11.

13. The Prosecution further submits that the ‘rights of the Suspect are already fully respected by the arrangements put in place’ as summarised in paragraph 14 of the Response.¹²
14. The Prosecution also submits that the Defence’s analogy with the *Al Mahdi* case is misplaced. The Prosecution explains that unlike the present case, ‘the *Al Mahdi* case had a limited scope, involving a guilty plea on a single charge’, whereas the present case is ‘being fully litigated’ and ‘involves novel and complex issues’. According to the Prosecution, ‘[t]he fact that Counsel spoke in Arabic in a few occasions in the *Al Mahdi* case was more of a practice allowed on a courtesy basis in light of the specific context and circumstances of that case, namely very short proceedings with no logistical impact or legal difficulties for the judges and parties or participants.’¹³
15. Finally, the Prosecution submits that the only actual benefit of the Request, would be to enable the Counsel for the Defence to make oral arguments in his mother tongue. The Prosecutions contends that ‘this fact, in and of itself, cannot be considered as a proper ground for the relief sought’.¹⁴

IV. MERITS

16. The Presidency notes that article 50(2) of the Statute and rule 41 of the Rules govern instances where authorisation is sought for the use of an official language of the Court as a working language in the context of Court proceedings.
17. The Presidency observes that the Request seeks authorisation of the use of Arabic for the making of oral submissions only and that the Defence will continue to submit written submissions in English. It is evident that the Request is seeking the partial use of Arabic during oral proceedings, which is clearly distinct from the authorisation of Arabic as a working language in the proceedings.
18. The Presidency notes that pursuant to article 50(3) of the Statute, the Court may authorise the use by a participant of a language other than English or French. Such

¹² ICC-01/12-01/18-285, para. 14.

¹³ ICC-01/12-01/18-285, paras. 16-17.

¹⁴ ICC-01/12-01/18-285, para. 19.

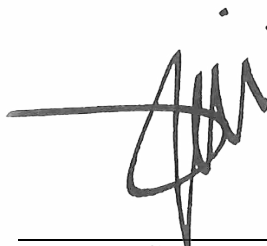
authorisation evidently falls to the relevant Chamber, which has control over the proceedings and is best placed to assess the impact of any such authorization.¹⁵

19. The Request is not properly a request within the scope of article 50(2) of the Statute and rule 41 of the Rules. If the defence wish to make a similar request pursuant to article 50(3) of the Statute, it should be re-submitted to the appropriate Chamber for consideration.

V. CONCLUSION

20. The Request is dismissed.

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



Judge Chile Eboe-Osuji
President

Dated this 4 April 2019

At The Hague, The Netherlands

¹⁵ See regulation 39(3); see also article 64(3)(b) of the Statute which pertains to the trial.