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

Date: 8 March 2019

Presidency

Before: Judge Chile Eboe-Osuji, President of the ICC

SITUATION IN THE REPUBLIC OF MALI

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

Public

**With confidential, *EX PARTE* Annex,
only available to the Prosecution and the Defence**

Defence request to authorise the use of Arabic as a working language

**Source: Defence for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag
Mahmoud**

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

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**Victims Participation and
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Other

I. Introduction

1. The Defence for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (the “Defence”) submits the present request to seek the authorisation to use Arabic as a working language for oral submissions before the Court in the case of the *Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*.

II. Applicable law

2. Pursuant to Article 50 of the Rome Statute (the “Statute”) and Rule 41 of the Rules of Procedure and Evidence (the “Rules”), the working languages of the Court are English and French. The Statute and the Rules however provide that the other official languages of the Court may be used as working languages in certain cases. Notably, the Presidency may authorise 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.

III. Submissions

3. The Defence attempted to collaborate, *inter partes*, with the Prosecution by sending an email on 22 October 2018 seeking an agreement as to the use of Arabic as a working language in the case against Mr Al Hassan.¹ However, the Prosecution rejected the Defence’s request on the grounds that it did not see any “particular need” for Arabic to be used as a working language in the present case.²
4. To the contrary, the Defence’s present request is justified by a number of factors:
 -) 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

¹ See Annex, email from Defence to OTP, 22 October 2018 at 15.02.

² See Annex, email from OTP to Defence, 31 October 2018 at 13.30.

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 in the present case, extends to the neighbouring countries that were affected by the events in Mali, including Algeria and Mauritania.

5. The Single Judge has recognised Mr Al Hassan’s right to understand the case against him, as a component of the right to a fair trial. The Single Judge issued, on 16 May 2018, the “Décision relative au système de divulgation et à d’autres questions connexes”, in which he ordered the Prosecution to provide Arabic versions of, *inter alia*, the Document Containing the Charges (the “DCC”) and the list of evidence submitted pursuant to Article 61(3) of the Statute and Rule 121(3) of the Rules.³ The Single Judge also ordered the Prosecution to provide an Arabic version of its motion requesting the issuance of a warrant of arrest against Mr Al Hassan.⁴
6. Similarly, following a Defence request dated 24 May 2018, the Registry agreed to provide the Arabic translation of the Pre-Trial Chamber’s decision on the Prosecution’s motion requesting the issuance of a warrant of arrest against Mr Al Hassan.⁵
7. As an official language of the ICC, Arabic may be used as a working language, pursuant to Article 50 of the Statute and Rule 41 of the Rules. It was notably used in the *Al Mahdi* case, by Defence counsel for Mr Al Mahdi, from the second hearing in the case, and for all subsequent hearings, including for the confirmation of charges.⁶ While the request and decision allowing the use of Arabic in the *Al Mahdi* case are not publicly available, the Defence submits that no circumstances differentiate the present case from the *Al Mahdi* precedent in terms of using Arabic as a working language. There is therefore no reason justifying to deny the use of this language in the present case. Like Mr Al Mahdi, Mr Al Hassan is a Malian national of Tuareg ethnicity and

³ Décision relative au système de divulgation et autres questions connexes, 16 May 2018, ICC-01/12-01/18-31, para. 26. All cases referenced in this document are to the Al Hassan case unless stated otherwise.

⁴ Décision relative à la requête de la défense sollicitant la traduction en arabe de la requête du Procureur aux fins de délivrance d’un mandat d’arrêt, 1 June 2018, ICC-01/12-01/18-42.

⁵ See “Public Redacted Version of the “Request for Translation”, 31 May 2018, ICC-01/12-01/18-39-Conf-Exp, 1 June 2018, ICC-01/12-01/18-39-Red, para. 17.

⁶ While Defence Counsel spoke in French during the first appearance of Mr Al Madhi (*Al Mahdi*, ICC-01/12-01/15-T-1-FRA), he used Arabic in all other hearings in that case (see for example, *Al Mahdi*, ICC-01/12-01/15-T-2-Red-FRA).

who uses Tamasheq and Arabic as his main languages. It is certainly not a coincidence that both Mr Al Mahdi and Mr Al Hassan chose Arabic speaking Defence counsel to represent them.

8. The Defence submits that allowing the use of Arabic as a working language would also facilitate the efficiency of the proceedings. Indeed, Arabic is the only common language between Mr Al Hassan and his Counsel. The preparation of the Defence would be facilitated by the use of Arabic in oral arguments, which would at the same time render the proceedings more efficient.
9. Furthermore, the impact on the proceedings would be minimal. Arabic interpreters are already required to be present during court hearings. Therefore, no additional resources will be required to accommodate the present request. The present request is also limited to oral submissions. Written submissions will continue to be submitted in English.
10. The Defence submits that the relief sought 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.

IV. Confidentiality

11. The Annex is classified as confidential, *ex parte*, only available to the Prosecution and the Defence because it refers to correspondence between the Prosecution and the Defence.

V. Conclusion

In light of the above submissions, the Defence respectfully requests the Presidency to authorise the use of Arabic as a working language during oral pleadings in the *Al Hassan* case.



Yasser Hassan
Lead Counsel for Mr Al Hassan

Dated this 8th Day of March 2019
At The Hague, The Netherlands