

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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Date: 19 March 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 REPUBLIQUE OF MALI

IN THE CASE OF

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

Public

**Prosecution's response to Defence request to authorise the use of Arabic as a
working language**

Source: Office of the Prosecutor

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

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I. Introduction

1. The Defence seeks authorization for a limited use of Arabic as a working language for oral submissions before the Court in the present case ("Request").¹
2. The Request should be rejected in its entirety: first, sufficient measures ensuring the respect of the rights of the Suspect are already in place, including the availability of simultaneous interpretation into Arabic at hearings, the assistance of an interpreter, and the translation of the witness statement on which the Prosecution intends to rely for the purposes of the confirmation of charges. The Chamber additionally ordered the translation into Arabic of key filings and decisions.
3. Second, such request for a limited use of a non-working language falls outside the scope of article 50(2) of the Statute and rule 41 of the Rules of Procedure and Evidence ("Rules"), which regulate broader requests involving the full use of an official language of the Court as a working language.
4. Rather, the Request is regulated by article 50(3) of the Statute and regulation 39(3) of the Regulations of the Court ("RoC"), thereby falling within the competence, and left to the discretion, of the Chamber seized of the case to make a determination on a case-by-case basis. On that ground alone, the Request should be dismissed *in limine*.
5. Finally, the Request is not adequately justified and should be denied on the merits. None of the criteria provided for under rule 41(1) and (2) are met. The majority of those involved in the case do not understand or speak the Arabic language, and allowing Counsel to make oral submissions in Arabic would

¹ Defence request to authorise the use of Arabic as a working language, ICC-01/12-01/18-268, p. 5.

unnecessarily burden the Court rather than facilitating the efficiency of the proceedings. Granting the Request would only enable Counsel for the Defence to make oral arguments in Arabic, his native language. Counsel for the Defence already expressed the wish to do so during the initial appearance hearing. This, in and of itself, is not a proper ground for the relief sought, especially in relation to the substantial and competing interests of the majority of those involved in the proceedings.

II. Submissions

A. The Request should be rejected in limine

6. The Request, which seeks authorization for a limited use of Arabic in oral submissions, does not fall within the competence of the Presidency pursuant to article 50(2) of the Statute and rule 41 of the Rules. Rather, it falls within the Pre-Trial Chamber's authority pursuant to article 50(3) of the Statute and regulation 39(3) of the RoC. It should therefore be dismissed *in limine* by the Presidency.
7. Article 50(2) of the Statute and rule 41 of the Rules regulate the instances where authorization is sought for the use of an official language of the Court as a working language. Once such authorization is granted by the Presidency, parties and participants will be able to use the authorized new working language in their written and oral submissions alike before the Court, and will be able to file and present any material or any evidentiary items in such language without an obligation to provide translation into English or French.²
8. In that context, the Registry has *inter alia* additional in-court transcription and translation obligations, including the obligation to translate into the new working language all decisions and orders taken by the relevant Chambers

² Regulation 39(1) of the RoC.

during the proceedings.³ Therefore, the disposition of such requests - which have far-reaching administrative and financial implications - lies with the Presidency in pursuance of its administrative and managerial functions, as foreseen by the statutory regime of the Court.

9. Conversely, an authorization for the *partial* use of another language in the proceedings falls squarely within the competence of the Chambers seized of the proceedings at the time pursuant to article 50(3) of the Statute and regulation 39(3) of the RoC.⁴ Accordingly, the Request, as it stands, cannot be adjudicated by the Presidency.

B. The Request does not satisfy any of the criteria provided for in rule 41

10. On the merits, the Request should be denied because it does not satisfy any of the criteria provided for in rule 41 of the Rules.
11. First, Arabic is not a language spoken by the majority of those involved in the case. Second, using Arabic would not facilitate the efficiency of the proceedings. Rather, it would pose an additional and unnecessary burden on the judges and the majority of the parties and participants in the case, who do not speak Arabic.
12. When counsel for the Defence addressed the Single Judge of the Pre-Trial Chamber in Arabic during the initial appearance hearing, he was reminded that Counsel should express themselves in one of the two working languages of the

³ See for instance, regulation 40(2)(a), (3) and (4) of the RoC.

⁴ When defining the authority competent to dispose of requests of “any party to the proceedings [to] authorize a language other than English or French to be used by such a party [including any official or other languages]”, Article 50(3) refers to “the Court” which is further interpreted in regulation 39(3) of the RoC as “a Chamber”. Conversely, article 50(2), when read in conjunction with rule 41 of the Rules, accords “the Presidency” with the authority to transform an official language into a working language.

Court.⁵ It is important that the judges be in a position to adequately follow submissions without any unnecessary obstacles.

13. In that context, it should be noted that oral submissions ordinarily contain complex and litigated legal argumentations. Having them made in a language foreign to the majority of those involved in the proceedings would render this measure counter-productive for little gain: even if submissions are made in Arabic, the Suspect will still need additional non-legal/technical explanations by his counsel and defence team before or after court sessions.
14. Importantly, the rights of the Suspect are already fully respected by the arrangements put in place:
 - At the initial appearance hearing, the Suspect acknowledged that he spoke and understood French,⁶ even if, as expressed by his Counsel, he prefers to use Arabic.⁷ Notwithstanding his knowledge of French, the Pre-Trial Chamber, as noted by the Defence,⁸ has taken necessary steps to ensure full respect of the Suspect's rights, including the right to be informed of the nature, cause and content of the charges in his language of preference;
 - The Chamber has made the following measures available to the Suspect: simultaneous Arabic interpretation in court,⁹ and free assistance of a competent interpreter and translation services for the purposes of investigations.¹⁰ It ordered the translations into Arabic of all the documents necessary to ensure his proper knowledge of the nature, cause

⁵ ICC-01/12-01/18-T-1-red-ENG, p. 3, l. 14-17.

⁶ ICC-01/12-01/18-T-1-red-ENG, p. 5, l. 19-21, p.7, l. 1-3.

⁷ ICC-01/12-01/18-T-1-red-ENG, p. 7, l. 1-3.

⁸ The Request, para. 5, 6.

⁹ See as example, ICC-01/12-01/18-T-1-red-ENG, p. 2, l. 5, p. 5, l. 24-25, p. 6, l 1.

¹⁰ ICC-01/12-01/18-T-1-red-ENG, p. 5, l. 24-25.

and content of the charges against him.¹¹ It also ordered the Prosecution in accordance with rule 76(3) of the Rules to provide to the Suspect the Arabic translations of the statements of the witnesses it intends to rely on for the purposes of the confirmation hearing.¹²

15. In addition to the simultaneous Arabic interpretation in the courtroom, the Suspect is able to communicate freely with his lead counsel in Arabic, enabling him to understand fully any submissions made in the working languages of the Court and engage in the proceedings. As noted, the Suspect also understands and speaks the French language in which most of the decisions have been made to date and in which the majority of the oral Prosecution submissions will be made in the courtroom.
16. At this juncture, it should be noted that the Defence's analogy with the *Al Mahdi* case¹³ is misplaced. Unlike the present case, the *Al Mahdi* case had a limited scope, involving a guilty plea on a single charge. Further, the trial lasted only a few days. The 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.
17. The present case is hardly comparable: first, it is being fully litigated; second, it involves novel and complex issues, pertaining to the nature and scope of the various crimes that were committed over a period of approximately 10 months,

¹¹ *Décision relative au système de divulgation et autres questions connexes*, 16 May 2018, ICC-01/12-01/18-31, para.26; *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.

¹² *Décision relative au système de divulgation et autres questions connexes*, 16 May 2018, ICC-01/12-01/18-31, para.23.

¹³ The Request, para. 7.

including cases of religious and gender persecution, torture, cruel treatment, outrages upon personal dignity, attacks against historical monuments and buildings dedicated to religion, passing of sentences without a previous judgment pronounced by a regularly constituted court, rape, sexual slavery, and forced marriage.

18. Additionally, claims by the Defence that authorizing counsel to make oral submissions in Arabic will ensure the publicity of the proceedings and enable the Arabic speaking communities (both in and outside Mali) and neighbouring countries to follow the proceedings¹⁴ is without merit. Indeed, Arabic interpretation is broadcast to the public; any person speaking Arabic is already in a position to effectively follow the hearings.
19. The only actual benefit of the Request, if granted, is that it would enable Counsel for the Defence to make oral arguments in his mother tongue. However, this fact, in and of itself, cannot be considered as a proper ground for the relief sought. First, it is the Suspect's languages ability and not that of his counsel or defence team that should be accommodated to ensure the respect of the suspect's rights. Indeed, and bearing in mind rule 22 of the Rules, and as established by the Appeals Chamber, "article 67 (1)(a) and (f) of the Statute relates to the language ability and knowledge of the suspect and/or accused, not of his/her [c]ounsel and/or defence team".¹⁵ As for the Suspect, once again, his rights are already preserved by the measures taken by the Chamber, including in-court interpretation. Second, any beneficial effect for counsel for the Suspect is clearly outweighed by the detrimental effects to the conduct of the proceedings that granting the Request would entail.

¹⁴ The Request, para. 4.

¹⁵ Decision on Mr Gbagbo's request for translation and an extension of time for the filing of a response to the document in support of the appeal, 22 August 2013, ICC-02/11-01/11-489, para. 11.

20. Therefore, the Request fails to provide any grounds to support the relief sought and should accordingly be denied.

III. Conclusion

21. For the reasons set out above, the Prosecution submits that the Request should be dismissed *in limine* or otherwise denied on the merits.



Fatou Bensouda
Prosecutor

Dated this 19th of March 2019

At The Hague, The Netherlands