

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: French

No.: ICC-01/12-01/15

Date: 8 September 2021

**THREE JUDGES OF THE APPEALS CHAMBER APPOINTED FOR THE REVIEW
CONCERNING REDUCTION OF SENTENCE**

Before: Judge Solomy Balungi Bossa, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Gocha Lordkipanidze

SITUATION IN THE REPUBLIC OF MALI

***IN THE CASE OF
THE PROSECUTOR v. AHMAD AL FAQI AL MAHDI***

Public Document

Defence Request to Make Oral Submissions in Arabic

Source: Defence for Mr Ahmad Al Faqi Al Mahdi

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

Office of the Prosecutor

Mr Karim A. A. Khan, QC
Mr James Stewart
Mr Gilles Dutertre

Counsel for the Defence

Mr Mohamed Aouini

Legal Representative of Victims

Mr Mayombo Kassongo

States' Representatives

The Republic of Mali
The United Kingdom

REGISTRY

Registrar

Mr Peter Lewis

Other

The Presidency

The present submissions are public.

Considering articles 50,¹ 55(1)(c),² 64(3)(b)³ and 67(1)(a) and (f)⁴ of the Statute and rule 41 of the Rules of Procedure and Evidence;⁵

¹ **Article 50 of the Statute. Official and working languages.**

1. The official languages of the Court shall be Arabic, Chinese, English, French, Russian and Spanish. [...]
2. 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.
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.

² **Article 55 of the Statute. Rights of persons during an investigation.** 1. 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; [...].

³ **Article 64 of the Statute. Functions and powers of the Trial Chamber.** 3. 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; [...]

⁴ **Article 67 of the Statute. Rights of the accused.** 1. 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; [...].

⁵ **Rule 41 of the Rules of Procedure and Evidence – 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: [...]

(b) The Prosecutor and the defence so request.

I – PROCEDURAL HISTORY

1. On 7 July 2021, the panel of three judges of the Appeals Chamber appointed for the review, in accordance with article 110 of the Statute, concerning reduction of the sentence of Mr Ahmad Al Faqi Al Mahdi, issued an order scheduling the hearing for the purpose of that review for 21 and 22 September 2021 and directing written observations from the various parties and participants in the case, by 30 August 2021 for some (the Registry, the Republic of Mali and the United Kingdom) and by 6 September 2021 for others (Mr Al Mahdi, the Prosecutor and the Legal Representative of Victims).⁶ The order invited the Registrar, the United Kingdom, the Republic of Mali, Mr Al Mahdi, the Prosecutor and the legal representative of victims to inform the judges by Monday, 19 July 2021 of any difficulties encountered that might affect the date of the hearing.
2. On 19 July 2021, the Prosecutor stated that the scheduled dates presented some problems, given that another case was taking place at the same time; he thus suggested that the hearing be held during the week of 27 September 2021 instead.⁷
3. The Defence for Mr Al Mahdi did not raise any objection to the dates the judges had set.⁸
4. On 21 July 2021, the judges composing the panel issued an order⁹ inviting Mr Al Mahdi, the Registrar, the United Kingdom, the Republic of Mali and the

⁶ ICC-01/12-01/15-392, 7 July 2021; ICC-01/12-01/15-392-tFRA, 11 July 2021.

⁷ ICC-01/12-01/15-396.

⁸ ICC-01/12-01/15-397-tENG.

⁹ ICC-01/12-01/15-398.

legal representatives of victims to respond by Monday, 26 July 2021 to the aforementioned observations of the Prosecutor.

5. On 26 July 2021, the Defence stated that it did not have any objection to the Prosecutor's request,¹⁰ and the legal representative of victim's input on the ground given by the Prosecutor was that the original dates set coincided with those of case ICC-01/12-01/18 in which they were both participating.¹¹
6. On 29 July 2021, the three-judge panel issued an order rescheduling the aforementioned hearing to 12 and 13 October 2021.¹²

II – SUBMISSIONS OF THE DEFENCE

7. The Defence draws the attention of the judges to the fact that Mr Al Mahdi is first and foremost a speaker of Arabic, a language in which he is fully proficient. He understands and speaks a little French and has learned English in detention. However, Arabic is the language which he best understands and in which he also best expresses himself. The most important document of the proceedings was translated into Arabic.
8. Throughout the hearings in Mr Al Mahdi's trial, interpretation was provided from and into the Court's two working languages: English and French. The same applied to Arabic – one of the Court's official languages – to enable Mr Al Mahdi to follow the entire proceedings properly.

¹⁰ ICC-01/12-01/15-400.

¹¹ ICC-01/12-01/15-401.

¹² ICC-01/12-01/15-403.

9. During his trial, Mr Al Mahdi requested and was granted permission to express himself in Arabic. His wish that his Counsel make oral submissions in that language was also granted.

10. At the hearing scheduled for 12 and 13 October 2021, Mr Al Mahdi wishes to speak and to do so in Arabic; he has already been preparing to that end for some considerable time. Similarly, he would like his Counsel to deliver his arguments in Arabic as he did at trial; Counsel has likewise long been preparing his upcoming oral submissions in Arabic.

IN THE LIGHT OF THE FOREGOING

In prospect of the hearing, the Defence respectfully moves this Chamber to:

- ✓ grant it leave to make oral submissions in Arabic, as it was able to do at trial;
- and
- ✓ allow Mr Al Mahdi to speak during the hearing, also in Arabic.

Without prejudice.

And justice will be done.

Dated this 8 September 2021,

At The Hague

[signed]

Mohamed Aouini

Lead Counsel