



Original: English

**No. ICC-01/12-01/15
Date: 22 September 2021**

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

**Before: Judge Solomy Balungi Bossa, Presiding
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

Decision on the “Defence Request to Make Oral Submissions in Arabic”

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

The Office of the Prosecutor

Mr Karim A. A. Khan, Prosecutor

Mr Gilles Dutertre

Counsel for the Defence

Mr Mohamed Aouini

Legal Representatives of Victims

Mr Mayombo Kassongo

States Representatives

The Republic of Mali

The United Kingdom

REGISTRY

Registrar

Mr Peter Lewis

The three judges of the Appeals Chamber of the International Criminal Court,

In the review by the Court concerning reduction of sentence of Mr Ahmad Al Faqi Al Mahdi (hereinafter: “Mr Al Mahdi”) pursuant to article 110 of the Statute,

Having before them the “Defence request to make oral submissions in Arabic” of 8 September 2021 (ICC-01/12-01/15-416-tENG),

Renders the following

DECISION

The “Defence request to make oral submissions in Arabic” is granted.

REASONS

I. PROCEDURAL HISTORY

1. On 29 July 2021, following a request of the Prosecutor which was unopposed,¹ the three judges of the Appeals Chamber, appointed for the review concerning reduction of sentence of Mr Al Mahdi, rescheduled a hearing in this matter from 21 and 22 September 2021 to 12 and 13 October 2021.²
2. On 8 September 2021, Counsel for Mr Al Mahdi filed the “Defence request to make oral submissions in Arabic” (hereinafter: “Request”).³

¹ See [Prosecution observations to the ‘Scheduling order for the review concerning reduction of sentence of Mr Ahmad Al Faqi Al Mahdi’, ICC-01/12-01/15-392](#) of 19 July 2021, ICC-01/12-01/15-396; [Réponse de la Défense aux observations ICC-01/12-01/15-396 du Procureur, conformément à l’ordonnance ICC-01/12-01/15-398](#) of 26 July 2021, ICC-01/12-01/15-400; [Réponse du Représentant legal aux ‘Prosecution observations to the ‘Scheduling order for the review concerning reduction of sentence of Mr Ahmad Al Faqi Al Mahdi’, ICC-01/21-01/15-392’](#) (ICC-01/12-01/15-396) of 26 July 2021, ICC-01/12-01/15-401; [Responses of the Authorities of the Republic of Mali and of the United Kingdom of Great Britain and Northern Ireland to the Orders for the review concerning reduction of sentence of Mr Ahmad Al Faqi Al Mahdi, ICC-01/12-01/15-392 and ICC-01/12-01/15-398](#) of 27 July 2021, ICC-01/12-01/15-402 (hereinafter: “Registry Report”). See also Registry Report, confidential annex V, ICC-01/12-01/15-402-Conf-AnxV (Note verbale from the Republic of Mali).

² [Decision re-scheduling the hearing before the three judges of the Appeals Chamber](#), ICC-01/12-01/15-403.

³ [Defence request to make oral submissions in Arabic](#), ICC-01/12-01/15-416-tENG (English translation filed on 14 September 2021).

II. MERITS

3. In the Request, Mr Al Mahdi seeks leave to address the three judges of the Appeals Chamber in Arabic at the upcoming hearing concerning the review of reduction of sentence and to allow his Counsel to make his oral submissions in Arabic.⁴ Mr Al Mahdi submits that while he “understands and speaks a little French and has learned English in detention” he is “fully proficient” in Arabic, a “language which he best understands and in which he also best expresses himself”.⁵ Furthermore, he submits that with the prior authorisation of the trial chamber, he was permitted to express himself in Arabic during his trial and his Counsel was permitted to make oral submissions in that language.⁶ In addition, he submits that during the trial hearings interpretation was provided from and into the Court’s two working languages (English and French) and Arabic to enable him to follow the entire proceedings.⁷

4. Preliminarily, the three judges of the Appeals Chamber note that Mr Al Mahdi refers to rule 41 of the Rules of Procedure and Evidence as the legal basis for the Request.⁸ Rule 41 provides, in relevant part, that “[f]or the purposes of article 50, paragraph 2, the Presidency shall authorize the use of an official language of the Court as a working language” under particular circumstances. The three judges of the Appeals Chamber find Mr Al Mahdi’s reference to this provision to be misplaced as it is the competency of the Presidency of the Court and not a panel of three judges of the Appeals Chamber who may adjudicate such a request. Nevertheless, the three judges of the Appeals Chamber will consider the Request pursuant to article 50(3) of the Statute which provides that

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

5. At the outset, it is noted that the Request consists of two parts. On the one hand, Mr Al Mahdi requests leave to speak during the hearing in Arabic and on the other hand

⁴ [Request](#), para. 10.

⁵ [Request](#), para. 7.

⁶ [Request](#), para. 9.

⁷ [Request](#), para. 8.

⁸ [Request](#), p. 3 referring to footnote 5.

he requests for his Counsel to be permitted to make oral submissions at the hearing in Arabic. The three judges of the Appeals Chamber will consider these requests in turn.

1. Mr Al Mahdi's request to speak during the hearing in Arabic

6. The three judges of the Appeals Chamber note Mr Al Mahdi's request to address them during the hearing concerning the review of reduction of sentence and find it appropriate to permit his request.

7. In relation to his request to address the three judges of the Appeals Chamber in Arabic, they note that pursuant to rule 224(1) of the Rules of Procedure and Evidence, the hearing on the review concerning reduction of sentence “shall be conducted with the sentenced person, who may be assisted by his or her counsel, **with interpretation**, as may be required” (emphasis added).⁹ In addition, they note that pursuant to articles 67(1)(a) and (f) of the Statute, an accused person shall be entitled to be “informed [...] of the nature, cause and content of the charge, in a language which the accused fully understands and speaks” and to “have [...] 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”. In interpreting these provisions, the Appeals Chamber held in the case of the *Prosecutor v. Germain Katanga* that

The ICC has certain working languages – English and French in the first place, with a possibility for others as referred to in the Statute and Rules. Whether one speaks of article 67 (1) (a) or (f) of the Statute, it seems that the starting point, as far as languages are concerned, will be a working language of the Court. That is, proceedings will in principle be provided in English or French. An accused may state, however, that he or she wishes to use another language – presumably on the basis that he or she does not fully understand and speak a working language of the Court.¹⁰

[...]

⁹ See also regulation 42(2) of the Regulations of the Court, which stipulates, in relevant part, that “[t]he Registrar shall ensure that interpretation services are provided in all proceedings: [...]; (b) [f]or the language of the [...] convicted [...] person if he or she does not fully understand or speak any of the working languages”.

¹⁰ [Judgment on the appeal of Mr. Germain Katanga against the decision of Pre-Trial Chamber I entitled “Decision on the Defence Request Concerning Languages”](#), 27 May 2008, ICC-01/04-01/07-522 (OA3), (hereinafter “*Katanga* OA3 Judgment”) para. 58 (footnotes omitted).

Given the addition of the word fully and the drafting history, the standard must be high. Therefore, the language requested should be granted unless it is absolutely clear on the record that the person *fully* understands *and* speaks one of the working languages of the Court and is abusing his or her right under article 67 of the Statute”.¹¹

8. The three judges of the Appeals Chamber note that during his initial appearance before the Court, Mr Al Mahdi affirmed that Arabic is the language that he fully understands and speaks.¹² During the trial proceedings, Mr Al Mahdi expressed himself in Arabic and interpretation from Arabic to French and then English was provided.¹³ In light of this, and in the absence of any indication on the record that Mr Al Mahdi fully understands and speaks one of the working languages of the Court or is abusing his right under article 67 of the Statute, the three judges of the Appeals Chamber consider that Mr Al Mahdi is entitled to use Arabic as a language that he fully understands and speaks during the hearing on review of reduction of sentence.

2. *Mr Al Mahdi’s request for his Counsel to render his oral submissions in Arabic during the hearing*

9. As to Mr Al Mahdi’s request for his Counsel to render his oral submissions in Arabic during the hearing, the three judges of the Appeals Chamber note that the rights under article 67 of the Statute as discussed above pertain only to an “accused person” or, as in this case, a “convicted person” and not to his or her Counsel. As noted above, article 50 (2) of the Statute provides, in relevant part, that “[t]he working languages of the Court shall be English and French”. Thus, proceedings before the Court will in principle be conducted in English or French and Counsel is required to make his or her submissions in English or French. In this context, the three judges of the Appeals Chamber note that the second sentence of rule 22(1) of the Rules of Procedure and

¹¹ [Katanga OA3 Judgment](#), para. 61 (emphasis in original).

¹² [Transcript of Hearing of 30 September 2015](#), ICC-01/12-01/15-T-1-ENG, p. 3 line 24 to p.4 line 2 (MR AL MAHDI: (Interpretation) Yes, Arabic is the language I understand and I speak. SINGLE JUDGE TARFUSSER: Okay. I would like to remind everybody to speak slowly and to pause from time to time in order to allow the good -- a good translation, interpretation for Mr Al Mahdi and obviously into English and French of what Mr Al Mahdi is going to say).

¹³ See e.g. [Transcript of Hearing of 22 August 2016](#), ICC-01/12-01/15-T-4-Red-ENG, p. 7 line 18 to p. 14 line 8; See also [Transcript of Hearing of 22 August 2016](#), p. 5 lines 9-12 (The Chamber wishes to remind all participants at the outset to speak slowly and to wait in between sentences for the benefit of the interpreters. This is particularly important in this trial as the Court is using relay interpretation, first from Arabic to French and then on to English).

Evidence stipulates that “counsel for the defence shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court”.

10. However, the three judges of the Appeals Chamber recall that pursuant to article 50(3) of the Statute, the Court may authorise a language other than English or French to be used by a party, if it considers such authorisation to be “adequately justified”.¹⁴ In the case at hand, the three judges of the Appeals Chamber note that Counsel for Mr Al Mahdi was permitted during the trial proceedings to render his oral submissions in Arabic¹⁵ and that interpretation was provided from Arabic into French and English.¹⁶ Furthermore, and in consultation with the Registry, the three judges of the Appeals Chamber consider that permitting Counsel for Mr Al Mahdi to make oral submissions in Arabic would not unduly constrain the efficiency of the proceedings or the resources of the Court since interpretation into Arabic would already be available for Mr Al Mahdi. Consequently, in the specific circumstances of these proceedings the three judges of the Appeals Chamber find that the request for Counsel for Mr Al Mahdi to use a language other than the working languages of the Court during the hearing on review of reduction of sentence is adequately justified.

11. In sum, the three judges of the Appeals Chamber grant the Request and authorise Mr Al Mahdi to address them at the hearing and to do so in Arabic pursuant to article 67(1)(f) of the Statute and rule 224(1) of the Rules of Procedure and Evidence. They further authorise Counsel for Mr Al Mahdi pursuant to article 50(3) of the Statute to make his oral submissions in Arabic.

¹⁴ See also regulations 39(3) and 40(2)(c) of the Regulations of the Court.

¹⁵ Request, para. 9; See e.g. [Transcript of Hearing of 22 August 2016](#), p. 7 line 18 to p. 14 line 8; [Transcript of Hearing of 24 August](#), ICC-01/12-01/15-T-6-ENG, p. 35 line 4 to p. 44 line 10.

¹⁶ See e.g. [Transcript of Hearing of 22 August 2016](#), p. 5 lines 10-12.

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



Judge Solomy Balungi Bossa
Presiding Judge

Dated this 22nd day of September 2021

At The Hague, The Netherlands