

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **4 July 2024**

THE APPEALS CHAMBER

Before:

**Judge Tomoko Akane, President
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze
Judge Erdenebalsuren Damdin**

SITUATION IN THE REPUBLIC OF MALI

IN THE CASE OF

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

Public

Request for Extension of Time to File the Notice of Appeal

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:****The Office of the Prosecutor**

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I. INTRODUCTION

1. Mr Al Hassan Ag Abdoul Aziz respectfully requests, pursuant to Rule 150(2)¹ and Regulation 35(2)², a limited extension of thirty-five (35) days to file his notice and grounds of appeal in respect of the Trial Judgment in the present case. This request will allow the parties to better formulate cogent and focused responses on novel issues stemming from a deeply complex document. It is supported by good cause, is appropriate, and is consistent with ICC precedent. Nor is any party unfairly advantaged or prejudiced; on the contrary, the Defence has consulted with both the Prosecution and the Legal Representative of Victims: The LRV has confirmed it does not oppose such a request while the Prosecution has expressed support and finds the length of the extension to be reasonable on the basis that both parties be granted the same extension of time for filing any notice of appeal.
2. Good cause underpins this request, including: (i) the length of the trial judgment, which, including annexes and the three separate and dissenting opinions issued by each Judge of Trial Chamber X,³ totals more than 1,000 pages;⁴ (ii) the unprecedented factual and legal complexity of an appeal of a split Judgment prompting separate and dissenting opinions on a number of issues; (iii) the novelty of the issues to be analysed and addressed, including convictions on charges litigated for the first time at the ICC and a full dissent by the Presiding Judge; (iv) diversion of the Defence's limited resources to the sentencing proceedings which are continuing to run parallel to the appeal phase;⁵ (v) the running of the present deadline during and throughout the judicial recess, a time of particularly scarce resources; and, (vi) the need to translate critical parts of the Judgment into Arabic for Mr

¹ Rules of Procedure and Evidence ("Rules"), Rule 150(2) ("[t]he Appeals Chamber may extend the time-limit set out in sub-rule 1, for good cause, upon the application of the party seeking to file the appeal").

² Regulations of Court ("Regulations"), Reg. 35(2) ("[t]he Chamber may extend or reduce a time limit if good cause is shown").

³ *Al Hassan*, Separate and Partly Dissenting Opinion of Judge Tomoko Akane, [ICC-01/12-01/18-2594-OPI](#), 26 June 2024 (39 pages); *Al Hassan*, Separate and Partly Dissenting Opinion of Judge Kimberly Prost, [ICC-01/12-01/18-2594-OPI2](#), 26 June 2024 (11 pages); *Al Hassan*, Opinion Individuelle et Partiellement Dissidente du Juge Antoine Kesia-Mbe Mindua, [ICC-01/12-01/18-2594-OPI3](#), 28 June 2024 (53 pages).

⁴ *Al Hassan*, Annex 1 to the Trial Judgment, [ICC-01/12-01/18-2594-Anx1](#), 26 June 2024; *Al Hassan*, Annex 2 to the Trial Judgment, [ICC-01/12-01/18-2594-Anx2](#), 26 June 2024; *Al Hassan*, Annex 3 to the Trial Judgment, [ICC-01/12-01/18-2594-Anx3](#), 26 June 2024 (Annexes 1, 2, and 3 total 70 pages, and include, *inter alia*, a full procedural history of the case and the updated self-contained set of charges and convictions).

⁵ The Defence notes that initial deadlines for sentencing were outlined in the Trial Chamber's Decision on the sentencing procedure, [ICC-01/12-01/18-2595](#), 28 June 2024, paras. 6, 8, 9. These deadlines were amended by the Single Judge's email decision received on 3 July 2024, which suspended all but one deadline, as provided for in the Procedural History below.

Al Hassan's review and to facilitate his informed instructions, in accordance with his fair trial rights and Rule 144.

3. This modest delay will also ensure that the parties need not present submissions in their respective appeals, including in their notices, in advance of the Trial Chamber's delivery of the sentence. This facilitates a more systematic and ordered appellate procedure given that the Sentencing Judgment may well prove relevant to the appeals.⁶ The duration of the requested extension is also believed to be reasonable and appropriate, and falls squarely within the parameters of other extensions previously granted by both this Chamber⁷ and in other international tribunals.⁸
4. This request is without prejudice to any future applications by either party concerning the applicable deadlines for submission of the appeal briefs and responses thereto.

⁶ Sentencing briefs and judgments have featured, whether directly or indirectly, in appeal briefs in at least two ICC cases. In *Ntaganda*, the Prosecution's sentencing brief was cited in the Defence appeal brief to demonstrate that the Chamber had erred in its assessment of Mr Ntaganda's testimony (see [ICC-01/04-02/06-2465-Red-Corr](#), para. 136, fn. 366 ("[n]evertheless, the Chamber found his evidence not to be credible, or preferred the contradictory evidence of Prosecution witnesses on nearly all significant disputed issues in the case"). In *Bemba*, the Defence Reply Brief quoted directly from the Prosecution's sentencing submissions, oral sentencing submissions, **and** the sentencing judgment itself to demonstrate that the Prosecution had been inconsistent in its position on the requisite elements of command responsibility (see [ICC-01/05-01/08-3483-Red](#), para. 44).

⁷ See e.g. *Bemba*, Decision on Mr Bemba's request for an extension of time for the filing of his document in support of the appeal, [ICC-01/05-01/08-3370](#), 15 April 2016, para. 6 [granting a total period of **182 days** between judgment (21 March 2016) and deadline for filing appeal brief (19 September 2016)]; *Ntaganda*, Decision on Mr Bosco Ntaganda's and the Prosecutor's requests for time extension for the notice of appeal and the appeal brief, [ICC-01/04-02/06-2364](#), 19 July 2019, paras. 5-6 (granting an extension of **30 days** to file the notice of appeal, totalling **60 days** between notification of the Trial Judgment and the notice of appeal).

⁸ See e.g. *Popović et al.*, Decision on Joint Defence Motion for Extension of Time to File Notice of Appeal, [IT-05-88-A](#), 25 June 2010, p. 2; *Popović et al.*, Decision on Motions for Extension of Time and for Permission to Exceed Word Limitations, [IT-05-88-A](#), 20 October 2010, pp. 5-6 (granting a total period of **225 days** between judgment and deadline for filing appeal brief); *Milutinović et al.*, Decision on Motions for Extensions of Time to File Notices of Appeal, 23 March 2009, [IT-05-87-A](#), p. 4 (granting a total period of **91 days** between judgment and deadline for filing notice of appeal); *Sainović et al.*, Decision on Joint Defence Motion Seeking Extension of Time to File Appeal Briefs, [IT-05-87-A](#), 29 June 2009, pp. 4-5 (granting a total period of **210 days** between judgment and deadline for filing appeal brief); *Nyiramasuhuko et al.*, Decision on Motions for Extension of Time for the Filing of Appeal Submissions, [ICTR-98-42-A](#), 22 July 2011, paras. 9, 13 and 16 (granting a total period of **180 days** for appellants whose defence was exclusively Francophone whereas the trial judgment was in English); *Perišić*, Decision on Momčilo Perišić's Motion for an Extension of Time to File a Notice of Appeal, [IT-04-81-A](#), 16 September 2011 (granting an extension of 30 days, and a total period of **60 days** between judgment and deadline for filing notice of appeal).

II. PROCEDURAL BACKGROUND

5. On 26 June 2024, Trial Chamber X rendered its Article 74 Judgment.⁹
6. On 28 June 2024, the Trial Chamber issued a decision on the sentencing procedure, truncating the customary timelines, with the delivery of any judgment pursuant to Article 76 on 28 August 2024.¹⁰
7. On 28 June 2024, the Presidency issued a decision reconstituting Trial Chamber X, with Judge Korner replacing Judge Akane, and Judge Keebong Paek replacing Judge Mindua.¹¹
8. On 3 July 2024, the parties received a communication from the Trial Chamber indicating the timeline for the sentencing procedure is under consideration; however, one of the more imminent deadlines remain unchanged, namely any request to present *viva voce* evidence is to be filed by 8 July 2024.¹² The Single Judge otherwise informed the parties that a new deadline for the filing of any request to submit non-oral evidence “will be set in the coming days”, and a ruling with respect to a request for an extension to time for the filing of written submissions and a subsequent hearing “will be issued in due course.” As at the time of filing of this request, no further correspondence has been received from the Single Judge.

⁹ *Al Hassan*, Trial Judgment, [ICC-01/12-01/18-2594-Red](#), 26 June 2024, para. 1785 (finding Mr Al Hassan guilty under Counts 1-6 and Counts 13-14).

¹⁰ [ICC-01/12-01/18-2595](#), para. 3 (“the Defence and the Legal Representatives of Victims shall file at the latest by Monday 8 July 2024 any request to present additional evidence”).

¹¹ *Al Hassan*, Decision Replacing Judges in Trial Chamber X, [ICC-01/12-01/18-2596](#), 28 June 2024, paras 6, 12.

¹² Trial Chamber X Communications, “Decision on pending requests related to the sentencing procedure”, 3 July 2024, 11:46am, which advised the following in relation to an amendment of the sentencing schedule: “[...] in light of the reconstitution of the Chamber after the issuance of the decision on the sentencing procedure, further consultations are required, including to address issues related to other judicial commitments.

At this stage, given the difficulties faced and the imminence of the time limit set, the Single Judge hereby suspends the deadline set to 8 July 2024 with respect to any request to submit non-oral evidence, and copies thereof (paras 3b) and 3c) of decision 2595). A new deadline will be set in the coming days.

The Single Judge recalls the Chamber’s prior indication that ‘it expects that any additional evidence, especially *viva voce* witnesses, will be very limited’ (para. 4 of decision 2595). Considering this, the deadline for requests to call *viva voce* witnesses (para. 3a) of decision 2595) is unchanged and any such request must be fully motivated and submitted by 8 July 2024.

Finally, the Chamber’s determination with respect to the Prosecution request seeking an extension of time limit for the filing of written submissions (currently set to 17 July) and subsequent hearing (currently set to 24-26 July) is deferred. A ruling will be issued in due course.”

III. APPLICABLE LAW

9. Rule 150, which governs the procedure on filing notices of appeal, prescribes 30 days from the date of notification of the judgment to file a notice of appeal against a decision of conviction.
10. Regulation 57 requires that the notice of appeal articulate the substantive grounds of appeal, the alleged errors, and the manner in and extent to which these errors affected the Judgment and for which relief is sought on appeal.
11. Sub-paragraph (2) of the Rule 150 affords the Appeals Chamber the discretion to extend this time limit upon a showing of “good cause”, language that is mirrored in Regulation 35(2).¹³ Good cause has been generally defined as follows:

Such reasons as may found a good cause are necessarily associated with a party’s duties and obligations in the judicial process. A cause is good, if founded upon reasons associated with a person’s capacity to conform to the applicable procedural rule or regulation or the directions of the Court. Incapability to do so must be for sound reasons, such as would objectively provide justification for the inability of a party to comply with his/her obligations.¹⁴

12. Chambers have broadly identified at least four categories wherein good cause has warranted an extension of time, especially in respect of notices of appeals: where **(1)** the Accused does not possess a translation of relevant parts of the trial judgment in a language they fully understand and speak, thereby preventing their meaningful participation in the proceedings in accordance with their fair trial rights;¹⁵ **(2)** an appeal would be particularly

¹³ Regulations, Reg. 35(2).

¹⁴ *Yekatom and Ngaïssona*, Corrected version of ‘Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona’, [ICC-01/14-01/18-403-Red-Corr](#), 14 May 2020, para. 23.

¹⁵ [ICC-01/05-01/08-3370](#), para. 6 (“the Appeals Chamber is satisfied that good cause exists for an extension [...] [and] is persuaded by [...] the fact that the Conviction Decision is currently only available in English and that parts are being translated on a regular and expedited basis into French, the language Mr Bemba ‘fully understands and speaks’”); [ICC-01/04-02/06-2364](#), para. 5 (“[Mr Ntaganda] also refers to the need to translate parts of the Conviction Decision into Kinyarwanda, the language which he fully understands and speaks [...] The Appeals Chamber considers that the reasons [...] demonstrate ‘good cause’, justifying a modest extension of the time limit”); *Ntaganda*, Decision on Mr Ntaganda’s request for an extension of the page and time limit for the filing of the appeal brief and related matters, [ICC-01/04-02/06-2415](#), 20 September 2019, para. 12 (“the Appeals Chamber considers that [...] good cause has been shown for a reasonable extension [...] The Appeals Chamber notes, in particular [...] the unavailability of the Conviction Decision in the language that Mr Ntaganda fully understands and speaks”); *Ongwen*, Decision on the Defence’s request for time extension for the notice of appeal and appeal brief against Trial Chamber IX’s “Reparations Order”, [ICC-02/04-01/15-2080](#), 14 March 2024, para. 9 (“[t]he Appeals Chamber recalls that, in the present case, it has previously granted extensions of time for the filing of notices of appeal and appeal briefs due to the unavailability

complex;¹⁶ (3) the Defence is burdened by concurrent sentencing proceedings;¹⁷ and (4) the statutory time limit overlaps with judicial recess.¹⁸

13. In respect of the right to translations, Article 67(1)(a) safeguards the accused's right 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"¹⁹ while Article 67(1)(f) entitles the accused to all translations "necessary to meet the requirements of fairness".²⁰
14. Rule 144(1) and (2) also entitles an accused to translations of Trial Chamber decisions concerning their criminal responsibility in a language they fully speak and understand; this necessarily includes the Trial Judgment. Rule 42 similarly affirms the Court's obligation to arrange for those translation services necessary to ensure the implementation of its obligations under the Statute and the Rules. The Appeals Chamber has granted

of Acholi translations of the impugned decisions"); *Situation in Venezuela I*, Decision on the Bolivarian Republic of Venezuela's application for extension of time to file the appeal brief, [ICC-02/18-52](#), 12 July 2023, paras. 7 and 8 ("Venezuela argues that the following circumstances establish good cause to grant the requested extension: [...] considerable delays are anticipated from the required translations of [...] the pertinent documents, as well as its own observations. The Appeals Chamber finds that good cause [...] has been shown").

¹⁶ [ICC-01/05-01/08-3370](#), para. 6 ("the Appeals Chamber is [...] persuaded by [...] the anticipated factual and legal complexity of the appeal"); [ICC-01/04-02/06-2364](#), para. 5 ("Mr Ntaganda submits that the Conviction Decision involves complex issues [...] The Appeals Chamber considers that [Mr Ntaganda's] reasons [...] as summarized above, demonstrate 'good cause', justifying a modest extension of the time limit"); [ICC-01/04-02/06-2415](#), para. 12 ("[t]he Appeals Chamber notes, in particular, Mr Ntaganda's submissions regarding: [...] the factual and legal complexity and the scope of the appeal"); [ICC-02/04-01/15-2080](#), paras. 9-10 ("especially due to the complexity and length of the 'Reparations Order [...] the Appeals Chamber is satisfied that the reasons put forward by the Defence demonstrate 'good cause'").

¹⁷ [ICC-01/05-01/08-3370](#), para. 6 ("the Appeals Chamber [...] is persuaded by [...] the fact that the defence team is currently absorbed in the sentencing proceedings that are ongoing"); [ICC-01/04-02/06-2364](#), para. 5 ("Mr Ntaganda submits that additional workload arises from the hearing on sentencing [...] The Appeals Chamber considers that [Mr Ntaganda's] reasons [...] as summarized above, demonstrate 'good cause', justifying a modest extension of the time limit"); [ICC-01/04-02/06-2415](#), para. 12 ("the Appeals Chamber considers that [...] good cause has been shown for a reasonable extension [...] The Appeals Chamber notes, in particular, [...] the concurrent burdens of the sentencing and reparations proceedings").

¹⁸ [ICC-02/18-52](#), paras. 7 and 8 ("[t]he Appeals Chamber finds that good cause [...] has been shown. Noting the upcoming judicial recess, the Appeals Chamber considers it appropriate to extend the time limit"); *Ongwen*, Decision on the Prosecutor's request for an extension of the time limit to file a response to the appeal brief, [ICC-02/04-01/15-1861](#), 17 June 2021, para. 17 ("[t]he Appeals Chamber is persuaded that good cause has been demonstrated that warrants an extension of time [...] the Appeals Chamber considers it reasonable to expect staff to use the upcoming judicial recess and Dutch school holiday schedule to reunite with their extended families"); *Katanga*, Decision on the "Defence Application for Extension of Time to File Document in Support of Appeal", [ICC-01/04-01/07-121](#), 21 December 2007, para. 5 ("[t]he forthcoming week (commencing 24 December 2007) is unusual in that, over and above the fact that it falls during the three week Court recess, it comprises two public holidays and special days of leave. On that basis, the Appeals Chamber regards it as appropriate to extend the prescribed time limit").

¹⁹ Rome Statute, Art. 67(1)(a).

²⁰ Rome Statute, Art. 67(1)(f).

accommodations of the briefing schedule where a convicted person was facing language difficulties.²¹ Indeed, where translations have been deemed appropriate, Chambers in all phases of proceedings have consistently found good cause to grant extensions²² and have stayed the running of applicable deadlines until notification of the translation in order to be consistent with the requirements of fairness and preserve the accused's rights.²³ This also aligns with the mainstream judicial practice of the *ad hoc* tribunals.²⁴

²¹ See e.g. *Ongwen*, Decision on Mr Ongwen's request for time extension for the notice of appeal and on translation, [ICC-02/04-01/15-1781](#), 24 February 2021, paras. 4, 12 ("Mr Ongwen submits that the due date to file his notice of appeal [...] should be suspended until a full Acholi translation of the decision is provided [...] Nevertheless, the Appeals Chamber finds [...] Mr Ongwen has set out reasons in the Request that demonstrate 'good cause' for a modest extension of time"); [ICC-01/04-02/06-2364](#), para. 5 ("[Mr Ntaganda] also refers to the need to translate parts of the Conviction Decision into Kinyarwanda, the language which he fully understands and speaks [...] The Appeals Chamber considers that [Mr Ntaganda's] reasons [...] as summarized above, demonstrate 'good cause', justifying a modest extension of the time limit"); [ICC-01/04-02/06-2415](#), para. 12 ("the Appeals Chamber considers that [...] good cause has been shown for a reasonable extension [...] The Appeals Chamber notes, in particular [...] the unavailability of the Conviction Decision in the language that Mr Ntaganda fully understands and speaks"); *Gbagbo and Blé Goudé*, Decision on Mr Gbagbo's requests for extension of time, translations and correction of transcripts, [ICC-02/11-01/15-1289](#), 26 November 2019, paras. 18, 20-21, 23-26 ("the Appeals Chamber considers that, in order to provide Mr Gbagbo with adequate time to prepare his response, [...] it is appropriate in this case to grant a modest extension of time such that Mr Gbagbo's response shall be filed within 14 days of the provision of the full draft French translation of Judge Henderson's Reasons").

²² [ICC-01/04-02/06-2364](#), para. 5 ("[Mr Ntaganda] also refers to the need to translate parts of the Conviction Decision into Kinyarwanda, the language which he fully understands and speaks [...] The Appeals Chamber considers that [Mr Ntaganda's] reasons [...] as summarized above, demonstrate 'good cause', justifying a modest extension of the time limit"); [ICC-01/05-01/08-3370](#), para. 6 ("the Appeals Chamber [...] is persuaded by [...] the fact that the Conviction Decision is currently only available in English and that parts are being translated on a regular and expedited basis into French, the language Mr Bemba 'fully understands and speaks'"); [ICC-02/04-01/15-2080](#), para. 9 ("[t]he Appeals Chamber recalls that, in the present case, it has previously granted extensions of time for the filing of notices of appeal and appeal briefs due to the unavailability of Acholi translations of the impugned decisions"). See also [ICC-02/04-01/15-1781](#), para. 12; *Ongwen*, Decision on the Defence request for extension of time limit for the filing of the notice of appeal and the appeal brief, [ICC-02/04-01/15-1837](#), 2 June 2021, paras. 6, 9 ("[t]he Defence argues that its request meets the criterion of 'good cause' [...] because [...] Mr Ongwen has not received a translation of the Sentencing Decision in a language he fully understands and speaks [...] The Appeals Chamber finds that the reasons put forward by the Defence demonstrate 'good cause'").

²³ **Pre-Trial:** *Abu Garda*, Decision on the Confirmation of Charges, [ICC-02/05-02/09-243-Red](#), 8 February 2010, p. 98; *Bemba*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, [ICC-01/05-01/08-424](#), 15 June 2009, p. 185; *Bemba*, Transcript of Confirmation of Charges Hearing (Open Session), [ICC-01/05-01/08-T-12-Red-ENG](#), 15 January 2009, p. 142, lines. 4-9. **Trial:** *Lubanga*, Decision on the translation of the Article 74 Decision and related procedural issues, [ICC-01/04-01/06-2834](#), 15 December 2011, para. 23 ("[t]he Chamber is of the view that it would be unfair on the accused, and it would constitute a breach of Article 67(1)(f) of the Statute (his entitlement to translations in order to secure fairness), as well as contravening the objective of Rule 144(2)(b) of the Rules, to require the accused to prepare for this particular stage of the proceedings when he is effectively unable to read the judgement in English"); para. 24 ("[a]ccordingly [...] the Chamber determines that the accused will have been 'notified' of the Article 74 Decision in the event of a conviction [...] when the French translation is effectively sent from the Court by the Registry").

²⁴ *Ljubicic*, Decision on the Defence Counsel's Request for Translation of all Documents, [IT-00-41-PT](#), 20 November 2002, p. 3; *Muhimana*, Decision on the Defence Motion for the Translation of Prosecution and Procedural documents into Kinyarwanda, the Language of the Accused, and into French, the Language of his Counsel, [ICTR-95-IB-I](#), 6

15. The complexity of the trial judgment, and consequently, the associated appeals process, has also been found to constitute good cause to grant an extension. A factor in the complexity assessment is the length of the decision and the ancillary documents requiring analysis. The longer and more detailed a decision – and the more extensive the analysis required of the legal principles and footnotes – the more complex the appeals process is assumed to be.²⁵
16. Complexity also turns on the implication of novel legal questions.²⁶ A contributing factor to the complexity of the *Bemba* appeal was Mr Bemba’s conviction on the basis of command responsibility, a mode of liability never before litigated at the ICC.²⁷
17. Concurrent sentencing proceedings are also frequently cited as good cause to issue extensions to notice of appeal deadlines.²⁸ Extensions are particularly apposite where the

November 2001, para. 33(c); *Delalic et al*, Decision on Defence Application for Forwarding the Documents in the Language of the Accused, [IT-96-21-T](#), 25 September 1996, para. 11.

²⁵ [ICC-01/04-02/06-2364](#), para. 3 and 5 (“[i]n support of his request, Mr Ntaganda submits that the Conviction Decision involves complex issues and that the factual findings are some 320 pages long [...] the Appeals Chamber considers that [Mr Ntaganda’s] reasons [...] as summarized above, demonstrate ‘good cause’, justifying a modest extension of the time limit”); *Ntaganda*, Request for extension of time to file notice of appeal, [ICC-01/04-02/06-2361](#), 17 July 2019, paras. 18-19; [ICC-02/04-01/15-2080](#), para. 9 (“[t]he Appeals Chamber recalls that, in the present case, it has previously granted extensions of time [...] The Appeals Chamber finds that the same considerations apply to the present Request [...] especially due to the complexity and length of the ‘Reparations Order’”); *Ongwen*, Public Redacted Version of “Defence request for a suspension of its notice of its intent to appeal Trial Chamber IX’s Reparations Order pursuant to Rule 150(2) of the Rules of Procedure and Evidence”, filed on 1 March 2024 as ICC-02/04-01/15-2075-Conf, [ICC-02/04-01/15-2075-Red](#), 4 March 2024, para. 31 (“this case includes [...] the longest reparations order issued in the history of the Court”); [ICC-01/05-01/08-3370](#), para. 6 (“the Appeals Chamber is satisfied that good cause exists [...] [and] is persuaded by [...] the anticipated factual and legal complexity of the appeal”); see also *Bemba*, Defence Request for Variation of the Time Limits for the Filing of the Document in Support of Appeal, [ICC-01/05-01/08-3353](#), 5 April 2016, paras. 12-13.

²⁶ [ICC-01/05-01/08-3370](#), para. 6 (“the Appeals Chamber is [...] persuaded by [...] the novelty of the legal issues to be addressed”); [ICC-01/04-02/06-2364](#), para. 5 (“[t]he Appeals Chamber considers that the reasons advanced by Mr Ntaganda [...] in support of their requests, as summarised above, demonstrate ‘good cause’”, referring to [ICC-01/04-02/06-2361](#), para. 19 (“[t]he Judgment raises exceptional and novel issues about gravity and culpability. The Defence should be accorded the modest delay requested to devote adequate time to these extremely important submissions”).

²⁷ [ICC-01/05-01/08-3370](#), para. 6. See also [ICC-01/05-01/08-3353](#), para. 11.

²⁸ [ICC-01/05-01/08-3370](#), para. 6 (“the Appeals Chamber [...] is persuaded by [...] the fact that the defence team is currently absorbed in the sentencing proceedings that are ongoing before the Trial Chamber, with final defence submissions due by 25 April 2016”); [ICC-01/04-02/06-2364](#), para. 5 (“Mr Ntaganda submits that additional workload arises from the hearing on sentencing [...] The Appeals Chamber considers that [Mr Ntaganda’s] reasons [...] demonstrate ‘good cause’, justifying a modest extension of the time limit for the filing of the notices of appeal”); [ICC-01/04-02/06-2415](#), para. 12 (“the Appeals Chamber considers that [...] good cause has been shown for a reasonable extension [...] The Appeals Chamber notes, in particular, [...] the concurrent burdens of the sentencing and reparations proceedings”).

parties intend to call additional witnesses;²⁹ need to conduct further investigations to identify possible sentencing evidence;³⁰ and have an increased workload as a result of scheduled oral hearings.³¹

18. Finally, Regulation 19*bis* affords Chambers the discretion to suspend time limits during judicial recess.³² In practice, the Appeals Chamber often suspends time limits during these periods,³³ for reasons ranging from logistical challenges³⁴ to family reunions.³⁵

IV. SUBMISSIONS

A. Granting the Extension Would Be In Accordance with Mr Al Hassan's Statutory Rights to an Arabic Translation

19. Rule 144 guarantees that the trial judgment, amongst other decisions, shall be provided as soon as possible to the accused in a language he or she fully understands or speaks.³⁶ As noted by Trial Chamber X, Mr Al Hassan is proficient in Tamasheq, Arabic, and, to some extent, French.³⁷ English, however, is a language Mr Al Hassan can neither speak or

²⁹ [ICC-01/04-02/06-2364](#), para. 5 (“[t]he Appeals Chamber considers that [Mr. Ntaganda’s] reasons [...] as summarised above, demonstrate ‘good cause’”); see also [ICC-01/04-02/06-2361](#), paras. 18-19.

³⁰ [ICC-01/04-02/06-2364](#), para. 5 (“[t]he Appeals Chamber considers that [Mr Ntaganda’s] reasons [...] as summarised above, demonstrate ‘good cause’ ... ”); see also [ICC-01/04-02/06-2361](#), paras. 18-19 (“[t]he work extends beyond merely drafting a motion: the Defence is required to conduct additional investigations and analysis to determine what additional evidence should now be adduced for sentencing”); [ICC-01/05-01/08-3370](#), para. 6; [ICC-01/05-01/08-3353](#), para. 23.

³¹ [ICC-01/04-02/06-2364](#), para. 5 (“[t]he Appeals Chamber considers that [Mr Ntaganda’s] reasons [...] demonstrate ‘good cause’”); see also [ICC-01/04-02/06-2361](#), paras. 18-19 (“[a]dditional work-load within this time-period also arises from the imminent evidential hearings on sentencing, [...] and the final substantive submissions on sentence that will be due around one week later”); [ICC-01/05-01/08-3370](#), para. 6 (“[t]he Appeals Chamber is satisfied that good cause exists for an extension [...] [and] is persuaded by [...] the fact that the defence team is currently absorbed in the sentencing proceedings that are ongoing”); see also [ICC-01/05-01/08-3353](#), para. 23.

³² Regulations, Reg. 19*bis*.

³³ [ICC-02/18-52](#), para. 13 (“while deadlines are not automatically suspended during judicial recess, the ICC has adopted a practice of doing so, to take into account the concrete logistical challenges that exist in terms of obtaining instructions and finalizing submissions at a time when key members of the GoV may be unavailable”).

³⁴ [ICC-02/18-52](#), paras. 7-8 (“Venezuela argues that the following circumstances establish good cause to grant the requested extension: [...] the Court’s practice of suspending deadlines during judicial recess in order to take into account the logistical challenges. The Appeals Chamber finds that good cause [...] has been shown. Noting the upcoming judicial recess, the Appeals Chamber considers it appropriate to extend the time limit”); [ICC-01/04-01/07-121](#), para. 5.

³⁵ *Ongwen*, Decision on Prosecutor’s Request, para. 17 (“[t]he Appeals Chamber is persuaded that good cause has been demonstrated that warrants an extension of time [...] the Appeals Chamber considers it reasonable to expect staff to use the upcoming judicial recess and Dutch school holiday schedule to reunite with their extended families”).

³⁶ Rules, Rule 144(2)(b).

³⁷ [ICC-01/12-01/18-2594-Red](#), para. 6 (“Mr Al Hassan speaks Tamasheq, Arabic, has a ‘good command’ of French, and speaks a bit of Songhai”).

understand.³⁸ With the exception of Judge Mindua’s dissenting opinion,³⁹ 964 of the 1017 pages of the Trial Judgment and its related documents – that is, 94.7% of the Trial Judgment – are in English.

20. The *Lubanga* Chamber has underscored the injustice of expecting an accused who does not speak English to prepare for appellate proceedings where the English-language decision would “run to many hundreds of pages [...] [and] involve detailed consideration of a large number of complex legal and factual issues”.⁴⁰
21. The Defence is already in communication with the Language Services Section of the Court to identify and obtain translations in Arabic, on a regular and expedited basis, of specific, essential parts of the judgment. This approach is intended to prioritise those sections deemed the most critical to Mr Al Hassan’s understanding of the findings against him. It is, however, a piecemeal and time-consuming approach, and one that requires time beyond the thirty days envisaged in Rule 150(1).
22. Noting that in *Lubanga*, a French translation of the judgment was provided five and a half months after its publication in English,⁴¹ the Defence requests that it be afforded the right

³⁸ *Al Hassan*, Defence request to authorise the use of Arabic as a working language, [ICC-01/12-01/18-268](#), 8 March 2019, para. 4 (“Mr Al Hassan does not speak or understand English, while his capacities in French are limited”).

³⁹ *Al Hassan*, Opinion Individuelle et Partiellement Dissidente du Juge Antoine Kesia-Mbe Mindua, [ICC-01/12-01/18-2594-OPI3](#), 28 June 2024.

⁴⁰ [ICC-01/04-01/06-2834](#), para. 23..

⁴¹ The English version was published on 14 March 2012, while the French version was published on 31 August 2012. See *Lubanga*, Judgment pursuant to Article 74 of the Statute, [ICC-01/04-01/06-2842](#), 14 March 2012. See also *Lubanga*, Jugement rendu en application de l’article 74 du Statut, [ICC-01/04-01/06-2842-tFRA](#), 31 August 2012.

to amend or supplement its grounds of appeal within 30 days of receiving the fully translated judgment.

B. The Length and Complexity of Mr Al Hassan’s Trial Judgment Militates Toward a Finding of Complexity That Warrants an Extension

23. The length of a trial judgment is highly relevant to an extension determination; the longer the judgment, the more it is presumed to be complex and an extension warranted. In *Ntaganda*, this Chamber accepted Mr Ntaganda’s assertion that his appeals process would be complex because the factual findings section alone of the trial judgment accounted for approximately 320 pages and contained more than 2000 footnotes.⁴² Similar rulings were made by this Chamber in *Bemba*, where the factual findings numbered 137 pages,⁴³ and in *Gbagbo*, where the majority’s conclusions was accompanied by separate and dissenting opinions.⁴⁴
24. In the present case, the factual findings account for no less than 408 pages and 2866 footnotes. In starker contrast, the factual findings in the *Bemba* trial judgment – which, incidentally, was also considered sufficiently complex as to merit an extension – made up less than 35% than those found in Mr Al Hassan’s judgment.
25. The complexity of the Trial Judgment is enhanced by the factual, as well as legal, complexity of the issues addressed therein. In fact, no other case at this Court has produced such a split trial judgment: In addition to the majority opinion, this case has generated three separate and dissenting opinions on multiple and disparate issues, including a dissent by

⁴² [ICC-01/04-02/06-2364](#), para. 3 and 5. (“Mr Ntaganda submits that the Conviction Decision involves complex issues and that the factual findings are some 320 pages long [...] the Appeals Chamber considers that the [Mr Ntaganda’s] reasons [...] as summarized above, demonstrate ‘good cause’, justifying a modest extension of the time limit for the filing of the notices of appeal”). See also [ICC-01/04-02/06-2361](#), paras. 18-19.

⁴³ [ICC-01/05-01/08-3370](#), para. 6 (“the Appeals Chamber is [...] is persuaded by [...] the anticipated factual and legal complexity of the appeal”); see also [ICC-01/05-01/08-3353](#), paras. 12-13.

⁴⁴ *Gbagbo*, Decision on the Prosecutor’s request for time extension for the notice of appeal and the appeal brief, [ICC-02/11-01/15-1268](#), 19 July 2019, para. 8. See also *Gbagbo*, Prosecution’s urgent request for extension of time limits under rule 150(1) and regulation 58(1), [ICC-02/11-01/15-1264](#), 16 July 2019, paras. 4 and 9.

Judge Mindua arguing for a full acquittal. Furthermore, the basis on which Judge Mindua would acquit is duress, an affirmative defence never before successfully invoked.⁴⁵

26. The *Al Hassan* trial judgment is also the first time an accused has been prosecuted and convicted for religious persecution and for the passing of sentences without due process.⁴⁶ Finally, Trial Chamber X has indicated that its judgment was partially founded on evidence introduced at trial but not necessarily discussed or contested by the parties.⁴⁷ The task now falls to the Defence to thoroughly review this additional evidence, further complicating the preparation for appellate review and militating towards a finding of good cause justifying an extension.
27. Any possible appeal will thus have to contend with a host of novel legal questions, which will require a degree of time and focus that cannot be afforded in thirty days, especially while contending with a parallel sentencing procedure.

⁴⁵ See *Ongwen*, Judgment on the appeal of Mr Ongwen against the decision of Trial Chamber IX of 4 February 2021 entitled “Trial Judgment”, [ICC-02/04-01/15-2022-Red](#), 15 December 2022, para. 1685 (“the Appeals Chamber finds that the Defence failed to show, and the Appeals Chamber did not identify, any error in the Trial Chamber’s findings concerning [...] grounds excluding criminal responsibility, i.e. [...] duress”).

⁴⁶ [ICC Prosecutor Karim A.A. Khan KC on the conviction of Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud](#) (“[t]his is an important moment for the International Criminal Court and for my Office. It is the first time an accused has been prosecuted and convicted for religious persecution, and for the passing of sentences without due process.”) See also [ICC-01/12-01/18-2594-Red](#), pp. 700-716 (passing sentences without due process) and pp. 720-738 (religious persecution).

⁴⁷ [ICC-01/12-01/18-2594-Red](#), para. 30 (“the Chamber has not restricted its assessment of the evidence to that referenced by the parties and participants. In applying a holistic and free evaluation of the evidence, the Chamber has considered, on a case-by-case basis, whether it could rely on the evidence on the trial record in order to establish a factual allegation”).

C. Concurrent Sentencing Proceedings Have Been Found to Constitute Good Cause Warranting Extensions to Deadlines for the Notice of Appeal

28. Sentencing proceedings at the ICC have typically ranged between 90 to 120 days. The *Bemba* sentencing phase ran from 21 March 2016 to 21 June 2016,⁴⁸ lasting 92 days; the *Ntaganda* Trial Judgment was issued on 8 July 2019⁴⁹ and the Sentencing Decision issued on 7 November 2019 (122 days),⁵⁰ while the *Ongwen* sentencing phase took 91 days, from 4 February 2021 to 6 May 2021.⁵¹
29. Although these timeframes are instructive, the Al Hassan team is currently not in a position to anticipate its finalised dates for sentencing procedures, despite the fact that the time to file any notice of appeal continues to run pursuant to Rule 150(1). The Single Judge's email of 3 July states that a ruling on a request for an extension of time for written submissions and hearing, originally listed for 17 July and 24-26 July 2024 respectively,⁵² is "deferred", suggesting that these dates may remain or could be altered.
30. While both the sentencing and appeals phases run, Mr Al Hassan's team will need to (i) review the Trial Judgment to identify arguments relevant to sentencing, (ii) identify, locate, and call additional witnesses, (iii) conduct further investigation and analysis to determine what may be necessary additional evidence, and (iv) prepare for imminent deadlines for both the sentencing and appeals phases. The Defence's limited resources necessitates halving its workforce to work on the two distinct phases, depriving each procedure, and Mr Al Hassan, from the knowledge, know-how, and focus of the full team. The Defence team does not have separate sentencing and appellate teams. All team members are thus required to undertake tasks for both phases concurrently, while facing logistical challenges associated with the security situation and poor network connections in North Mali. The nexus between such issues and workload was recognised by the Single Judge, who

⁴⁸ *Bemba*, Decision on Sentence pursuant to Article 76 of the Statute, [ICC-01/05-01/08-3399](#), 21 June 2016, para. 1 ("[o]n 21 March 2016, the Chamber convicted Mr Jean-Pierre Bemba Gombo").

⁴⁹ *Ntaganda* Judgment, [ICC-01/04-02/06-2359](#), 8 July 2019.

⁵⁰ *Ntaganda* Sentencing judgment, [ICC-01/04-02/06-2442](#), 7 November 2019.

⁵¹ *Ongwen* Sentence, [ICC-02/04-01/15-1819-Red](#), 6 May 2021, para. 1 ("[o]n 4 February 2021, the Chamber delivered its judgment pursuant to Article 74 of the Statute, convicting Dominic Ongwen").

⁵² [ICC-01/12-01/18-2595](#), paras 6, 8.

suspended the timeframes for any request to submit non-oral evidence due to the “difficulties faced” by the parties and participants.

31. Putting aside the workload generated by the sentencing procedure, and assuming the date of notification of the Trial Judgment is assumed to be 1 July 2024, enforcement of the present time limit for filing the notice of appeal means the deadline would fall on 31 July 2024.
32. The concomitant demands of the sentencing and appeals processes impose a significant burden on Mr Al Hassan’s defence team, forcing a division of resources and labour at precisely the time its full force is needed to navigate a complex and difficult judgment. These difficulties would be mitigated by the granting of a limited extension of the notice deadline.

D. ICC Precedent Militates Towards a Finding of Good Cause Justifying an Extension Where the Time Limit Runs During the Judicial Recess

33. Highlighting the challenges in *Katanga*,⁵³ *Ongwen*,⁵⁴ and the *Situation in Venezuela I*,⁵⁵ the Appeals Chamber has established that observing time limits during judicial recess is nearly impossible due to the logistical difficulties and realities faced by teams operating under such constraints.
34. Upon receipt of the first Order scheduling the delivery of the Trial Judgment on 6 December 2023, Mr Al Hassan’s defence team assumed the Trial Judgment would be delivered on 18 January 2024,⁵⁶ and the sentencing and appeals procedures would be finished by July 2024. As such, individual team members have requested annual leave;

⁵³ [ICC-01/04-01/07-121](#), para. 5 (“[t]he forthcoming week (commencing 24 December 2007) is unusual in that, over and above the fact that it falls during the three week Court recess, it comprises two public holidays and special days of leave. On that basis, the Appeals Chamber regards it as appropriate to extend the prescribed time limit”).

⁵⁴ [ICC-02/04-01/15-1861](#), para. 17 (“[t]he Appeals Chamber is persuaded that good cause has been demonstrated that warrants an extension of time... the Appeals Chamber considers it reasonable to expect staff to use the upcoming judicial recess and Dutch school holiday schedule to reunite with their extended families.”).

⁵⁵ [ICC-02/18-52](#), paras. 7 and 8 (“Venezuela argues that the following circumstances establish good cause to grant the requested extension: [...] the Court’s practice of suspending deadlines during judicial recess in order to take into account the logistical challenges. The Appeals Chamber finds that good cause [...] has been shown. Noting the upcoming judicial recess, the Appeals Chamber considers it appropriate to extend the time limit [...]”).

⁵⁶ *Al Hassan*, Order scheduling the delivery of the Trial Judgment, [ICC-01/12-01/18-2576](#), 6 December 2023, para. 1 (“the Chamber hereby announces that its judgment... will be delivered in a public hearing to be held on 18 January 2024 at 14:00”).

planned holidays or travel to their home countries to visit family, including children; and made other personal or professional commitments. The change of the Judgment Delivery date, albeit for very good reasons, has necessarily affected the sentencing and appellate timelines, with the present appellate deadlines falling during the summer judicial recess.

35. The majority of the *Al Hassan* Defence are foreign to the Netherlands, and many have made plans to travel or return to their home countries during the recess. The team will also be working in multiple time zones, giving rise to logistical difficulties in coordinating substantive discussions, meetings, and internal deadlines. The importance of the notice of appeal demands the team's full focus and resources, which is untenable during the judicial recess when many team members will be on leave or less available.

V. CONCLUSION AND RELIEF SOUGHT

36. Mr Al Hassan's request for an extension of time to file the notice of appeal is reasonable and appropriate. He is narrowly tailoring his request to that which is strictly necessary for his effective participation in his defence and is minimising delay to the judicial calendar by requested a circumscribed extension of only thirty-five (35) days.
37. The Appeals Chamber is respectfully requested to:

GRANT Mr Al Hassan's request to extend the time limit to file the notice of appeal by a total of thirty-five (35) days; and

ORDER that the updated filing deadline for any party seeking to file an appeal to the Trial Judgment is now 4 September 2024.



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Respectfully submitted this 4 July 2024,
At The Hague, The Netherlands