

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-01/12-01/18**
Date: **6 September 2024**

THE APPEALS CHAMBER

Before: Judge Luz del Carmen Ibáñez Carranza, Presiding
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze
Judge Miatta Maria Samba
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

With Confidential Annex A and B

**Defence Response to “Prosecution Request for Extension of Time to File Appeal
Brief, ICC-01/12-01/18-2643”**

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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I. INTRODUCTION

1. The Defence for Mr Al Hassan Ag Abdoul Aziz herein responds to the Prosecution Request for Extension of Time to File Appeal Brief (“Prosecution Request”).¹ Although the Defence does not oppose the Prosecution’s Request, it considers that a further, and discrete, extension of time to file any Appeal brief by 5 December 2024 is warranted in the circumstances.

2. As indicated in the Prosecution Request, any Appeal brief is currently required to be filed, at the earliest, on 25 September 2024, being 90 days from the formal notification of the Trial Judgment.² This deadline remains despite the Chamber having granted an extension of time for any Notice of Appeal to be filed on 18 September 2024.³

3. The Prosecution Request does not adequately reflect or consider specific issues which will impact the Defence’s ability to prepare a fulsome and considered Appeal brief. In particular, these relate to: a) allowing time for Mr Al Hassan to receive full Arabic translations of the Trial Judgment to enable him to meaningfully participate in any appellate proceeding; b) offsetting any prejudice caused to the Defence due to its involvement in concurrent sentencing proceedings, which are anticipated to be completed in end-October; c) accommodate the complexity and legal novelty of any Appeal brief, due to the issues raised in the Trial Judgment; and d) reducing the impact of the judicial recess on all parties for any response. These underlying issues are compounding and overlapping, resulting in difficulties with the Defence’s capacity to conform to current proposed appellate deadlines, and as such, constitute good cause to further extend the time for filing any Appeal brief.

4. On this basis, the Defence requests an extension of time to file any Appeal brief to 5 December 2024. The Defence would not oppose these same extension being granted to the Prosecution.

¹ [ICC-01/12-01/18-2643](#). The Defence files Annexes A and B to this Response as Confidential, on the basis that they are internal communications.

² Regulation 58(1) of the Regulations of the Court, being from the date of formal notification on 26 June 2024.

³ [ICC-01/12-01/18-2606](#) (extension to 4 September 2024); [ICC-01/12-01/18-2628](#) (extension to 18 September 2024).

II. APPLICABLE LAW

5. With respect to an extension of time, Regulation 35(2) provides that a “Chamber may extend or reduce a time limit if good cause is shown”. The Defence refers to and relies upon the applicable law regarding good cause for extensions of time as outlined in its previous request.⁴ Briefly, although ‘good cause’ has not been defined, reasons which may support good cause are “necessarily associated with a party’s duties and obligations in the judicial process” and are “associated with a person’s capacity to conform to the applicable procedural rule or regulation of the directions of the Court.”⁵

6. Relevantly, the Appeals Chambers have identified the following reasons which may justify an extension of time: a) lack of translation of the Trial Chamber decision in to the language that the accused fully understands and speaks;⁶ b) the inability for the accused to meaningfully participate in his appeal because of an absence of a translation of the Trial Chamber decision;⁷ c) the length and complexity of any appeal;⁸ d) the impact of concurrent sentencing proceedings;⁹ and e) the impact of judicial recess on any appellate proceedings.¹⁰

III. SUBMISSIONS

⁴ [ICC-01/12-01/18-2597](#), paras 9-18.

⁵ *Katanga & Ngudjolo*, Reasons for the Extension of Time for the Preventive Relocation Response, [ICC-01/04-01/07-653](#), para. 5.

⁶ *Gbagbo & Blè Goudé*, Decision on Mr Gbagbo’s requests for extension of time, translations and correction of transcripts, [ICC-02/11-01/15-1289](#), paras 21-25; *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](#), paras 3-5; *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](#), para. 12.

⁷ *Gbagbo & Blè Goudé*, Decision on Mr Gbagbo’s requests for extension of time, translations and correction of transcripts, [ICC-02/11-01/15-1289](#), para. 23; *Bemba*, Decision on the request for an extension of the time limit, [ICC-01/05-01/08-827](#), paras 3, 7-8.

⁸ *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](#), para. 5; *Bemba*, Decision on Mr Bemba’s request for an extension of time for the filing of his document in support of appeal, [ICC-01/05-01/08-3370](#), para. 6; *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](#), para. 12; *Ongwen*, Decision on extension of time for the notice of appeal and appeal brief against Reparations Order, [ICC-02/04-01/15-2080](#), para. 9.

⁹ *Bemba*, Decision on Mr Bemba’s request for an extension of time for the filing of his document in support of appeal, [ICC-01/05-01/08-3370](#), para. 6; *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](#), para. 5; *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](#), para. 12.

¹⁰ *Situation of Venezuela I*, Decision on the Bolivarian Republic of Venezuela’s application for extension of time to file the appeal brief, [ICC-02/18-52](#), para. 8; *Ongwen*, Decision on Prosecutor’s request for an application of the time limit to file a response to the appeal brief, [ICC-02/04-01/15-1861](#), para. 17; *Katanga*, Decision on the Defence Application for Extension of Time to File Document in Support of Appeal, [ICC-01/04-01/07-121](#), para. 5.

3.1. Mr Al Hassan's Statutory Rights to an Arabic Translation

7. Mr Al Hassan is entitled to receive the Trial Judgment in a language that he fully understands,¹¹ which is Arabic. The Defence notes that this entitlement previously formed part of the Chamber's consideration in finding whether good cause existed when granting an extension of time concerning the notice of appeal.¹²

8. Since 1 July 2024, the Defence has been in contact with the Language Services Section ("LSS") of the Court, and provided the LSS with instructions to translate priority sections of the Trial Judgment. The LSS suggested that a feasible way forward would be to provide draft translations to the Defence on a rolling basis, however such translations would be subject to revision with a final Arabic version to follow at a later stage.¹³

9. On 27 August 2024, the Defence received the draft translations of the priority sections as requested, along with others. On 27 August 2024, the Defence received the first tranche of draft Arabic translations, which were then made available to Mr Al Hassan to review. On 5 September 2024, the Defence received a second tranche from LSS. As of the date of this filing, approximately 42% of the Trial Judgment has been completed for draft translation.¹⁴ The Defence is very grateful for the assiduous efforts of LSS but it is clear that receipt of a fully revised Arabic translation of the Trial Judgment will be a time intensive and laborious exercise.

10. Although the Defence appreciates the immense workload on the LSS and its work so far, the piecemeal provision of translations for any and/or all of the Trial Judgment will continue to impact Counsel's ability to obtain fulsome instructions from Mr Al Hassan concerning any appellate proceedings, as well as Mr Al Hassan's ability to meaningfully participate therein. This is compounded by the complexity of the legal and factual issues as contained in the Trial Judgment, the need to assist Mr Al Hassan in understanding these issues in their context and to obtain his instructions on these issues in any Appeal brief.

11. To date, the team's native Arabic speaker has attempted to provide Mr Al Hassan with sporadic translations, however this has taken time and was made more difficult due to the fact that the Defence was also engaged in a concurrent sentencing phase and meeting requisite

¹¹ Rule 144(2), Article 67(1)(b), (f).

¹² [ICC-01/12-01/18-2606](#), paras 10-11, 13.

¹³ See Annex A.

¹⁴ See Annex B.

deadlines. The Defence envisages further resourcing issues pending translations being provided, in that team resources will continue to be re-directed in communicating the Trial Judgment's findings to Mr Al Hassan, as opposed to all team members working primarily on the analysis and drafting of any Appeal brief.

12. Accordingly, not only does the delayed provision of any translations undermine Mr Al Hassan's right to engage in his own defence and potential appeal, but it also attenuates Counsel's ability to prepare a considered Appeal brief. A brief and further extension of time than envisaged by the Prosecution is an appropriate remedy to ensure that Mr Al Hassan suffers no prejudice in the circumstances, and to ensure that it does not result in a fragmented Appeal brief. While the Defence seeks to retain the right to file a Regulation 61 request to vary its grounds and any related submissions in its Appeal brief following receipt and review of a fully revised Arabic translation of the Trial Judgment, it also anticipates that a brief further extension until 5 December may obviate the need to file such a variation and thus in the interests of judicial efficiency.

13. Since filing a variation request pursuant to Regulation 61 with subsequent submissions will trigger a right to a supplementary response, it is anticipated that the overall briefing schedule will be shorter if the Defence is placed in a position where it can file a comprehensive brief, based on full instructions, by 5 December 2024. This is reflected by the fact that the extension of time currently proposed by the Defence will result in a briefing schedule that is either equivalent to, or shorter than, time frames extended to the *Ongwen* and *Ntaganda* Defences, for similar translation issues.¹⁵ The Defence seeks to avoid the need for further litigation on these issues, resulting in the extension as proposed herein.

3.2. Concurrent Sentencing Proceedings and Team Resources

14. The Defence has, since the formal notification of the Trial Judgment, been involved in concurrent sentencing proceedings, as well as other unforeseen litigation, which has impacted on its resourcing and Appeal brief preparation. The sentencing phase will continue to progress alongside the preparation of any Appeal brief.

15. The sentencing hearing took place on 4 September 2024 with the Defence making oral

¹⁵ In *Ongwen*, the Defence Appeal Brief fell due roughly 5 ½ months after the judgment was issued: [ICC-02/04-01/15-1811](#); In *Ntaganda*, the last tranche of the Appeals Brief fell due 6 ½ months after the judgment was issued: [ICC-01/04-02/06-2415](#).

submissions. The sentencing judgment is anticipated to be delivered by the Trial Chamber by the end of October, in accordance with the Chamber's guidelines.¹⁶ Following its delivery, the Defence, as well as Mr Al Hassan, will be required to analyse, review and discuss the decision, and turn its mind as to whether it intends to appeal. If so, any notice will be required to be completed within 30 days. As noted previously, the team does not have bifurcated trial/appeals teams and so all team members will be required to simultaneously work on both. This has, and will, impact the preparation of the Appeal brief, as the full team will only be capable of commencing full time work on its Appeal brief from 5 September onwards (being the day after the sentencing hearing).

16. During this time, the Trial Chamber has undergone various re-compositions which the Defence has filed observations on. As a result, the Defence was required to re-direct resourcing to deal with this litigation as opposed to furthering its analysis and drafting of any final Appeal brief.

17. Additionally, the final composition of the Defence's team for the sentencing/appeals stage was only recently confirmed by the Counsel Support Service, being 23 August 2024. Al Hassan Defence was the first team to enter in to the sentencing/appeals stage pursuant to the new Legal Aid Policy (entered into force on 1 January 2024), raising issues of interpretation and implementation required to be considered by the Registry. The Defence is immensely grateful for the Registry's assistance in finding solutions for the team, however the uncertainty as to composition has caused instability in delegating and completing necessary work for both the Notice of Appeal and preparing any Appeal brief. Such issues have previously been found by the Appeals Chamber to be relevant in and directly impactful on the Defence's preparation of Appeal brief, and considered good cause in extending the time for such filing.¹⁷

18. Accordingly, such litigation has and will continue to impact the Defence's ability to prepare a fulsome and considered Appeal brief.

3.3. Complexity, novelty and scope of arguments on appeal

19. The Defence refers to the Prosecution's arguments concerning the complexity and novelty of any appeal,¹⁸ and shares its views in that the Trial Judgment is lengthy, factually and legally

¹⁶ See <https://www.icc-cpi.int/sites/default/files/2023-07/230707-chambers-manual-eng.pdf> para. 90.

¹⁷ *Onghwen*, Decision on Mr Onghwen's second request for time extension, [ICC-02/04-01/15-1811](#), para. 10.

¹⁸ [ICC-01/12-01/18-2643](#), paras 5-6.

complex and deals with novel issues of law, meeting the requirement of good cause as noted previously by the Chamber.¹⁹ The Defence would state further that these matters will naturally impact on the likely scope of the arguments in any appeal, which will be wide-ranging and expansive. Such issues remain and are compounded by the fact that once translations of the Trial Judgment are obtained, extensive factual analysis and input will need to be sought from Mr Al Hassan and implemented in to any Appeal brief, impacting on its timely preparation.

20. In particular, the Defence seeks to stress the fact that the Trial Judgment has dealt with novel issues of law to be considered by this Court, including the reliance on the defence of duress in acquitting Mr Al Hassan of charges, and convictions pursuant to Article 8(2)(c)(iv) of the Statute; as well as extremely complex factual issues. There are also procedural issues to be raised concerning the impact of COVID-19 on the entirety of the trial and the use and reliance of torture-tainted evidence throughout the proceedings and Trial Judgment, which have never come before the Court before.

21. Due to the operation of Regulation 55, the number of counts for which Mr Al Hassan was convicted was also greater than those for which he was acquitted.²⁰ This means that the scope and related workload of a Defence Appeal Brief is likely to be greater than that of the respective Prosecution Appeal. While the Defence does not oppose the Prosecution being granted the same deadline as the Defence, the Prosecution's estimate of the time needed to prepare and finalise an appeal falls short of the time required by the Defence.

3.4. Impact of Judicial Recess

22. The Defence notes that the timeframe proposed by the Prosecution Request, with an Appeal brief being due on 18 November 2024, will result in any responses being due on 20 January 2025.²¹ Accordingly, the review and analysis of the Appeal briefs, and the drafting of comprehensive responses, will fall substantively during the judicial recess over the Christmas and New Year period, being due shortly thereafter. This deadline will impact all parties in ensuring the availability of all team members to undertake these tasks in accordance with this timeframe, noting that many will be travelling to be reunited with extended family during the recess period.

¹⁹ ICC-01/12-01/18-2606, para. 12.

²⁰ He was convicted under counts 1, 2, 3, 4, 5, 6, 13 and 14, and acquitted of counts 7, 8, 9 and 10.

²¹ Regulations 59(1) of the Regulations of the Court

23. Conversely, if the deadline is established as 5 December 2024, responses will fall due on 4 February 2025. This will allow for additional time to finalise such responses, after the conclusion of the judicial recess. This point is distinct from, and without prejudice to the issue as to whether the occurrence of judicial recess during the schedule for responses may, in of itself, warrant a discrete extension of time for responses.

IV. **RELIEF SOUGHT**

24. For the reasons set out above, the Defence for Mr Al Hassan respectfully requests the Appeal Chamber to:

- **GRANT** an extension of time for the parties to file any Appeal brief by 5 December 2024.



Melinda Taylor
Lead Counsel for Mr Al Hassan

Dated this 6th day of September 2024
At The Hague, The Netherlands