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

Date: **9 October 2024**

THE APPEALS CHAMBER

Before: Judge Luz del Carmen Ibáñez Carranza, Presiding Judge
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

**Prosecution Response to the Defence Request for Extension of Page Limit for its Appeal
Brief**

Source: Office of the Prosecutor

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Submissions

1. The Prosecution opposes the Defence's request to extend the page limit of its document in support of the appeal against the Conviction Decision from 100 pages to 250 pages ("Request").¹ There are no exceptional circumstances justifying such a significant extension of pages, which amounts to two and a half times the pages allotted for appeal briefs under regulation 58(5) of the Regulations of the Court ("RoC"). The Request should be rejected for the following reasons.

2. First, the Defence submits that exceptional circumstances justifying a page extension under regulation 37(2) of the RoC arise from the need to accommodate the comprehensive scope and range of arguments in its appeal, as foreshadowed in the Defence Notice of Appeal.² However, the Defence Notice of Appeal does not clearly establish such exceptional circumstances. As the Prosecution recently submitted, the Defence Notice of Appeal fails to comply with regulation 57 of the RoC, since grounds 2-4 in particular fail to specify the discrete errors in the Chamber's approach or conclusions; fail to refer to the precise underlying findings that the alleged errors relate to; and fail to specify how the alleged errors affect the Trial Judgment.³ The lack of specificity in the Defence Notice of Appeal prevents a proper assessment of whether a page extension is indeed justified, or whether the Defence will be able to fairly present all of its arguments within the allocated 100-page limit for appeal briefs under the RoC. Moreover, it presents a risk that the Defence will not be able to properly focus its arguments in its appeal brief—a risk that will only magnify with a significantly larger page allowance. Although the Appeals Chamber is yet to rule on the Prosecution Request, the Defence should not be able to benefit from the vagueness of its Notice of Appeal as currently drafted to secure such a significant extension of pages.

3. Second, an appeal brief of 250 pages far exceeds the 100 pages ordinarily permitted under the RoC for appeal briefs, but also in this case, exceeds the amount for the parties' closing briefs at trial.⁴ It is particularly disproportionate in this case given that Mr Al Hassan was convicted of 8 out of the 14 counts with which he was charged.⁵ In circumstances where the

¹ ICC-01/12-01/18-2653 ("[Request](#)").

² [Request](#), para. 2, citing ICC-01/12-01/18-2648 ("[Defence Notice of Appeal](#)").

³ ICC-01/12-01/18-2650 ("[Prosecution Request](#)"), para. 8.

⁴ The Prosecution closing brief was 224 pages (excluding the cover and notification pages): ICC-01/12-01/18-2475-Conf. The Defence closing brief was 231 pages (excluding the cover and notification pages): ICC-01/12-01/18-2485-Conf-Corr2.

⁵ ICC-01/12-01/18-2594-Red ("[Trial Judgment](#)"), pp. 832-834.

convictions which the Defence seeks to challenge on appeal are more limited than the scope of the charges which the Defence addressed in its closing brief, it seems incongruous that the Defence would need more pages for its appeal brief. It is relevant in this context that an appeal brief is not an opportunity for parties to repeat their arguments at trial, but rather to present arguments according to the appellate standard of review. This is inherently a more limited exercise, as reflected in the smaller page allowance afforded to appeal briefs than to trial briefs under the RoC.⁶

4. Third, the Defence bases the Request in part on the fact that Mr Al Hassan “has 50 convictions across all incidents and eight different counts”.⁷ Yet it is not apparent from the Defence Notice of Appeal that the Defence alleges any errors in the Trial Chamber’s assessment of the underlying incidents for which he was convicted, apart from in ground 2 of its appeal.⁸ Rather, the remaining grounds of the Defence’s appeal appear to generally challenge the Trial Chamber’s overall approaches to certain types of evidence, the fairness of the trial, and its overall findings on the crimes and modes of liability. In that sense, it would appear that the number of incidents underlying the conviction will have little impact on the length of argumentation in the Defence appeal brief.

5. Finally, the factual and legal complexity of the Trial Judgment and its three separate and dissenting opinions, and the novelty of issues raised therein are not reasons that could justify the requested page extension in this case.⁹ The scope of an appeal, and therefore the necessary length of the appeal brief, is defined by the notice of appeal, and not the trial judgment.¹⁰ The Defence has already benefitted from two extensions of time to file its Notice of Appeal based on, *inter alia*, the factual and legal complexity and length of the Trial Judgment.¹¹ These extensions should have enabled the Defence to effectively define the scope of its appeal, taking

⁶ See [RoC](#), regulation 38(1) (specifying a 120-page limit for pre-trial, trial and closing briefs and responses), and regulation 58(3) (specifying a 100-page limit for appeal briefs).

⁷ [Request](#), para. 8.

⁸ [Defence Notice of Appeal](#), para. 14 (alleging that the Trial Chamber’s error of law and procedure in its evidentiary framework undermined the reliability of critical findings underpinning Mr Al Hassan’s conviction, including, *inter alia*, the evidential foundation for linking the commission of specific incidents to the common plan and/or organisational policy, and the facts underpinning the crimes for which he was convicted).

⁹ *Contra* [Request](#), paras. 7-13.

¹⁰ [RoC](#), regulation 58(1) and (2) (noting that, having filed the notice of appeal in accordance with regulation 57, which must set out the grounds of appeal, the alleged errors and their impact on the appealed decision, the appellant must file the appeal brief setting out its reasons in support of each ground of appeal). See e.g. ICC-02/04-01/15-2022-Red (“*Ongwen AJ*”), paras. 111-112 (disregarding submissions made by the Ongwen Defence that were not included in its notice of appeal as they fell outside the scope of appeal).

¹¹ ICC-01/12-01/18-2606 (“[First Notice of Appeal Time Extension Decision](#)”), paras. 12-13; ICC-01/12-01/18-2628 (“[Second Notice of Appeal Time Extension Decision](#)”), paras. 11, 14.

into account the complexity and novelty of the issues raised in the Trial Judgment, and to set this out in its Notice of Appeal. In this case, the Defence Notice of Appeal is deficient, as the Prosecution has already submitted.¹² Indeed, the impermissibly broad and vague Notice of Appeal that fails to comply with the requirements under regulation 57 of the RoC cannot justify granting an extension of pages for the appeal brief. Otherwise, the Defence would be allowed to benefit from its disregard of the Court's regulatory framework, which would affect the fairness and expeditiousness of the appeal proceedings.

Conclusion

6. The Prosecution opposes the Defence's request to extend the page limit of its appeal brief from 100 pages to 250 pages, for the reasons set out above.



Karim A.A. Khan KC, Prosecutor

Dated this 9th day of October 2024

At The Hague, the Netherlands

¹² [Prosecution Request](#). See further above para. 2.