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No. ICC-01/12-01/18 A

Date: 21 October 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 document

Decision on the “Prosecution Request regarding the Defence Notice of Appeal”

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
Ms Helen Brady

Counsel for the Defence

Ms Melinda Taylor
Ms Felicity Gerry

Legal Representatives of Victims

Mr Seydou Doumbia
Mr Mayombo Kassongo
Mr Fidel Nsita Luvengika

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

The Appeals Chamber of the International Criminal Court,

In the appeals of Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud and the Prosecutor against the decision of Trial Chamber X entitled “Trial Judgment” of 26 June 2024 (ICC-01/12-01/18-2594-Conf; public redacted version: ICC-01/12-01/18-2594-Red),

Having before it the “Prosecution request regarding the Defence Notice of Appeal” of 27 September 2024 (ICC-01/12-01/18-2650),

Pursuant to regulation 29 of the Regulations of the Court,

Renders, the following

DECISION

The aforementioned Prosecutor’s request regarding the Defence’s notice of appeal is rejected.

REASONS

I. PROCEDURAL HISTORY

1. On 26 June 2024, Trial Chamber X (hereinafter: “Trial Chamber”) rendered its decision entitled “Trial Judgment” (hereinafter: “Conviction Decision”), in which Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (hereinafter: “Mr Al Hassan”) was convicted on numerous counts of crimes against humanity and war crimes.¹

2. On 26 July 2024, following joint requests from the Defence and the Prosecutor,² the Appeals Chamber granted a further extension of time to 18 September 2024 for the filing of a notice of appeal against the Conviction Decision by the Defence and the Prosecutor (hereinafter: “Decision of 26 July 2024”).³

¹ [Trial Judgment](#), [ICC-01/12-01/18-2594-Red](#) (confidential version filed on the same day, ICC-01/12-01/18-2594-Conf).

² [Joint Defence and OTP Request for Limited Extension of the Deadline for the Notices of Appeal](#), 25 July 2024, ICC-01/12-01/18-2623; [Prosecution notice concerning “Joint Defence and OTP Request for Limited Extension of the Deadline for the Notices of Appeal”](#), 25 July 2024, ICC-01/12-01/18-2625.

³ [Decision on the “Joint Defence and OTP Request for Limited Extension of the Deadline for the Notices of Appeal”](#), ICC-01/12-01/18-2628, p. 3, paras 14-15.

3. On 18 September, the Defence⁴ and the Prosecutor⁵ filed their respective notices of appeal against the Conviction Decision (hereinafter: “Defence’s Notice of Appeal” and “Prosecutor’s Notice of Appeal”, respectively).

4. On 27 September, the Prosecutor filed a request (hereinafter: “Request”), alleging deficiencies in the Defence’s Notice of Appeal, in violation of regulation 57 of the Regulations of the Court (hereinafter: “Regulations”).⁶

5. On 3 October 2024, following an order of the Appeals Chamber,⁷ the Defence filed its response to the Request (hereinafter: “Defence’s Response”) requesting the Appeals Chamber to reject the Request.⁸

II. MERITS

A. Summary of the submissions

6. The Prosecutor submits that the Defence’s Notice of Appeal fails to comply with the requirements for notices of appeal pursuant to regulation 57 of the Regulations, and requests the Appeals Chamber to exercise its discretion under regulation 29 of the Regulations and determine (i) whether any of grounds two to four, or sub-grounds thereunder, “warrant dismissal *in limine*”; or (ii) “whether they may be remedied” by ordering the Defence to amend its Notice of Appeal in compliance with regulation 57, “without affecting the schedule for the filing of the Defence appeal brief”.⁹

7. In support of his request, the Prosecutor argues that, in light of the amendment to regulation 57 of the Regulations¹⁰ as well as the relevant jurisprudence of the Appeals Chamber and that of other *ad hoc* tribunals,¹¹ an appellant is required “to identify with precision the

⁴ [Defence Notice of Appeal against the Trial Judgment](#), 18 September 2024, ICC-01/12-01/18-2648.

⁵ [Prosecution notice of appeal](#), ICC-01/12-01/18-2649.

⁶ [Prosecution request regarding the Defence Notice of Appeal](#), ICC-01/12-01/18-2650.

⁷ [Order for a response to the “Prosecution Request regarding the Defence Notice of Appeal”](#), ICC-01/12-01/18-2651.

⁸ [Defence Response to the “Prosecution Request concerning the Defence notice of appeal”](#), ICC-01/12-01/18-2652.

⁹ [Request](#), paras 1-2, 27, 30.

¹⁰ [Request](#), para. 4.

¹¹ [Request](#), paras 5-6, referring to *The Prosecutor v. Dominic Ongwen*, [Decision on Defence request for a page limit extension for its appeal brief and order setting time limit for responses to the Prosecutor request for extension of time to file her response to the appeal brief](#), 8 June 2021, ICC-02/04-01/15-1850 (A), para. 14; *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, [Decision on the Prosecutor’s request for time extension for the notice of appeal and the appeal brief](#), 19 July 2019, ICC-02/11-01/15-1268 (A), para. 8; *The Prosecutor v. Bosco Ntaganda*, [Decision on Mr Bosco Ntaganda’s and the Prosecutor’s requests for time extension for the notice of](#)

findings of the [t]rial [c]hamber that were allegedly in error, and the impact of these errors on the [t]rial [c]hamber's [decision]".¹² On this basis, he submits that the Defence's Notice of Appeal, in particular grounds two to four, allege errors in the Trial Chamber's overall approach or its conclusion, without: (i) "specifying the discrete error in the [Trial] Chamber's approach or its conclusions"; (ii) "referring to the underlying findings of the [Trial] Chamber that the alleged errors relate to"; and (iii) "specifying how the alleged errors affect the [Conviction Decision]".¹³

8. According to the Prosecutor, the absence of proper notice of the Defence's appeal affects the fairness and expeditiousness of the appeal proceedings,¹⁴ as it renders meaningless the procedure under regulation 61 of the Regulations,¹⁵ places the Prosecutor under "immense pressure" to respond to the Defence's appeal brief within the time limit set out in regulation 59(1) of the Regulations,¹⁶ and affects the Appeals Chamber's ability to anticipate the scope of the Defence's appeal at this stage of the proceedings.¹⁷ Lastly, the Prosecutor submits that, in view of the current difficulties in responding to the Defence's appeal, he reserves "the right to request an extension of time to respond to the Defence at the appropriate time, if necessary".¹⁸

9. In response, the Defence submits that the Request should be rejected as it is "procedurally and substantially unfounded" and an "attempt to litigate substance outside the procedural deadlines and page limits [...] allocated to [appeal] briefs and responses [thereto]".¹⁹ It contends that, given the "clear wording" and the "distinct requirements of [r]egulations 57 and 58",²⁰ and considering the content of prior notices of appeal that had been accepted by the Appeals Chamber and other *ad hoc* tribunals,²¹ the Defence's Notice of Appeal, including grounds two to four, conforms with the requirements for notices of appeal under regulation 57

[appeal and the appeal brief](#), 19 July 2019, ICC-01/04-02/06-2364 (A), para. 5; ICTY, Appeals Chamber, *The Prosecutor v. Boškoski & Tarčulovski*, [Judgement](#), 19 May 2010, IT-04-82-A, para. 246; ICTY, *The Prosecutor v. Mile Mrkšić and Veselin Šljivančanin*, [Decision on the Prosecution's Motion to Order Veselin Šljivančanin to Seek Leave to File an Amended Notice of Appeal and to Strike New Grounds Contained in His Appeal Brief](#), 25 August 2008, IT-95-13/1-A, para. 9.

¹² [Request](#), para. 6.

¹³ [Request](#), paras 8, 20.

¹⁴ [Request](#), paras 1, 22.

¹⁵ [Request](#), para. 23.

¹⁶ [Request](#), paras 1, 24.

¹⁷ [Request](#), para. 25.

¹⁸ [Request](#), para. 29.

¹⁹ [Defence's Response](#), paras 1-2, 31.

²⁰ [Defence's Response](#), paras 1, 7.

²¹ [Defence's Response](#), paras 1, 8.

of the Regulations.²² Finally, it submits that the requested dismissal of the Defence's Notice of Appeal is "excessive" since imposing new requirements that are absent in the existing legal texts at this stage of the proceedings would restrict the exercise of Mr Al Hassan's statutory right to appeal a conviction.²³ Should the Appeals Chamber take issue with the Defence's Notice of Appeal in its current form, the Defence avers that an appropriate remedy, consistent with the previous practice of the Court and other *ad hoc* tribunals, would be an order to refile a notice of appeal.²⁴

B. Determination by the Appeals Chamber

10. The Appeals Chamber recalls that regulations 57 and 58 of the Regulations were amended on 12 July 2017 with the principle aim of enabling the Appeals Chamber to commence its work on the appeals at an earlier stage and to allow for an oral hearing to be held sooner in the appellate process.²⁵ In particular, sub-regulation 57(e) of the Regulations was added in order to require that notices of appeal state the appellant's grounds of appeal and specify the alleged errors and how they affect the appealed decision.²⁶

11. Regulation 57 of the Regulations currently reads:

For the purposes of rule 150, the appellant shall file a notice of appeal which shall state:

- (a) The name and number of the case;
- (b) The title and date of the decision of conviction or acquittal, sentence or reparation order appealed against;
- (c) Whether the appeal is directed against the whole decision or part thereof;
- (d) The specific provision of the Statute pursuant to which the appeal is filed;
- (e) The grounds of appeal, cumulatively or in the alternative, specifying the alleged errors and how they affect the appealed decision;
- (f) The relief sought.

12. The Appeals Chamber notes that apart from formally requiring that a notice of appeal state the grounds of appeal, "specifying the alleged errors and how they affect the appealed

²² [Defence's Response](#), paras 1, 8-26.

²³ [Defence's Response](#), paras 7, 27-28.

²⁴ [Defence's Response](#), para. 29, referring to, *inter alia*, *The Prosecutor v. Ahamad Al Faqi Al Mahdi*, [Order in relation to the notice of appeal filed on 18 September 2017](#), 26 September 2017, ICC-01-12-01/15-240 (A), p. 3, para. 6.

²⁵ See [ICC Judges amend the Regulations of the Court](#), 20 July 2017.

²⁶ See [Explanatory note to the amendment of the Regulations of the Court](#), 20 July 2017, pp. 1-3.

decision”, the amended regulation provides no further guidance on the level of specificity needed with respect to the alleged errors and its effect on the appealed decision. Nevertheless, the Appeals Chamber considers that by its plain terms, regulation 57(e) of the Regulations affords an appellant discretion in the manner and degree of precision employed when setting out the grounds of appeal and alleging errors that have a demonstrated effect on the appealed decision. That said, the Appeals Chamber notes that this discretion is not unfettered. Bearing in mind the purpose of amended regulation 57(e) of the Regulations, the Appeals Chamber finds that it is imperative that a notice of appeal is clear and articulated in a manner that would permit the Appeals Chamber to gauge the scope/extent of the appeal at that early stage of the proceedings. In this regard, the Appeals Chamber recalls that it has previously declined to consider allegations that were included in an appeal brief but not “explicitly” set out in a notice of appeal.²⁷

13. In addition, the Appeals Chamber underlines that the level of detail in a notice of appeal would also be relevant to the Appeals Chamber’s assessment of any subsequent request for variation of the grounds of appeal pursuant to regulation 61 of the Regulations.

14. Turning to the specific allegations of deficiencies in the Defence’s Notice of Appeal, the Appeals Chamber considers that the question arising is whether regulation 57(e) of the Regulations requires the Defence to specify errors to the level of detail, as argued by the Prosecutor. In this regard, the Prosecutor avers that

the Defence alleges errors in the [Trial] Chamber’s overall approach or conclusions on a wide range of topics without: (a) specifying the discrete error in the [Trial] Chamber’s approach or its conclusions; (b) referring to the precise underlying findings of the Chamber that the alleged errors relate to; and (c) specifying how the alleged errors affect the Trial Judgment.²⁸

For the reasons that follow, the Appeals Chamber finds that the Prosecutor’s interpretation of regulation 57(e) is too exacting and to a certain extent tends to conflate the requirements of regulation 57 with that of regulation 58 of the Regulations.

²⁷ *The Prosecutor v. Dominic Ongwen*, [Judgment on the appeal of Mr Dominic Ongwen against the decision of Trial Chamber IX of 6 May 2021 entitled “Sentence”](#), 15 December 2022, ICC-02/04-01/15-2023 (A2), paras 140-141.

²⁸ [Request](#), para. 8.

15. Regulation 58(2) of the Regulations currently reads:

The appeal brief shall set out the legal and/or factual reasons in support of each ground of appeal. Reference shall be made to the relevant part of the record or any other document or source of information as regards any factual issue. Each legal reason shall be set out together with reference to any relevant article, rule, regulation or other applicable law, and any authority cited in support thereof. Where applicable, the finding or ruling challenged in the decision shall be identified, with specific reference to the page and paragraph number.

16. The Appeals Chamber notes that regulation 58(2), unlike regulation 57 of the Regulations, stipulates the level of detail and precision required from an appellant when filing his/her appeal brief which includes setting out the legal and/or factual reasons in support of each ground of appeal and identifying the finding or ruling in the decision that is being challenged. Thus, contrary to the Prosecutor's argument, the Defence's Notice of Appeal was not required to refer "to the precise underlying findings of the [Trial] Chamber that the alleged errors relate to".²⁹

17. Furthermore, the Appeals Chamber is not persuaded by the Prosecutor's contention that the Defence's Notice of Appeal fails to "[specify] the discrete error in the [Trial] Chamber's approach or its conclusions".³⁰ The Appeals Chamber notes that under the heading "Commentary" in relation to each ground of appeal, the Defence specifically sets out the general parameters of the alleged errors: the type of errors and an outline of the reasons for alleging these errors.³¹ Moreover, each ground of appeal includes a section entitled "Content" which identifies the crimes, modes of liability or contextual elements that are challenged, as well as the nature of the errors alleged in that connection.³² The Appeals Chamber further notes that the Defence adequately identifies how the alleged errors affected the Conviction Decision. For example, in relation to ground two the Defence alleges that the identified errors affected the Conviction Decision because they resulted in "factual findings that are legally flawed and fundamentally unsafe".³³

18. Finally, the Appeals Chamber observes the Defence's reliance on phrases or words such as: "include, but are not limited to"³⁴ or "including"³⁵ in its Notice of Appeal when listing, in

²⁹ See [Request](#), para. 8.

³⁰ See [Request](#), para. 8.

³¹ [Defence's Notice of Appeal](#), paras 6-11, 12-15, 16-20, 21-23.

³² [Defence's Notice of Appeal](#), pp. 6-7, 9, 10-12, 13-15.

³³ [Defence's Notice of Appeal](#), para. 13; see also paras 19, 20, 22.

³⁴ [Defence's Notice of Appeal](#), para. 12.

³⁵ [Defence's Notice of Appeal](#), para. 14.

a non-exhaustive manner, categories of evidence allegedly affected by an error or when referring to a non-exhaustive list of findings.³⁶ The Appeals Chamber considers that the use of such words or phrases in a notice of appeal could potentially lead to an inappropriate expansion of the grounds of appeal in an appeal brief. However, in the case at hand, the Appeals Chamber observes that the addition of qualifiers such as “*core categories of evidence*”³⁷ and “*critical findings underpinning Mr Al Hassan’s conviction*”,³⁸ coupled with the abovementioned sections entitled “Commentary” under each ground of appeal, mitigates the potential for any inappropriate expansion of the grounds of appeal in the forthcoming appeal brief.

19. In light of the foregoing, the Appeals Chamber finds that the Defence’s Notice of Appeal, at a minimum, satisfies the requirements of regulation 57 of the Regulations. Accordingly, the Request is rejected.

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



Judge Luz del Carmen Ibáñez Carranza
Presiding

Dated this 21st day of October 2024

At The Hague, The Netherlands

³⁶ [Defence’s Notice of Appeal](#), paras 12, 14.

³⁷ [Defence’s Notice of Appeal](#), para. 12 (emphasis added).

³⁸ [Defence’s Notice of Appeal](#), para. 14 (emphasis added).