

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/12-01/18**
Date: **13 December 2021**
Date of submission: **17
December 2021**

THE APPEALS CHAMBER

Before: Judge Luz del Carmen Ibáñez Carranza, Presiding
Judge Piotr Hofmański
Judge Solomy Balungi Bossa
Judge Rosario Salvatore Aitala
Judge Gocha Lordkipanidze

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 Annexes A to C

Public Redacted Version of “Defence Regulation 35 Request for Extension of Time to File Response to Prosecution Appeal of ‘Decision on second Prosecution request for the introduction of P-0113’s evidence pursuant to Rule 68(2)(b) of the Rules’”, 13 December 2021, ICC-01/12-01/18-2067-Conf

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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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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States Representatives

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Reparations Section**

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I. Introduction

1. On 15 November 2021, Trial Chamber X ('the Chamber'), by Majority, rejected the Prosecution's second request to introduce into evidence under Rule 68(2)(b) material related to P-0113 ('Impugned Decision').¹
2. On 22 November 2021, the Prosecution sought leave to appeal the Impugned Decision,² setting out four distinct issues it considered certifiable for such appeal, which the Defence opposed.³
3. On 6 December 2021, the Chamber granted the Prosecution leave to appeal, in part.⁴ By virtue of the Chamber's decision and pursuant to the Regulations of the Court,⁵ the Prosecution is expected to file its Appeal of the Impugned Decision by 17 December 2021 ('Prosecution Appeal'), with the Defence response due on 30 December 2021.
4. As expounded below, the litigation of the Impugned Decision will require careful attention, which, coupled with resource-intensive investigations, the coincidence of the current deadline with a series of holidays, and other extraordinary pressures currently facing the Defence, constitute good cause to vary the applicable time limit. Hence, the Defence respectfully requests the Appeals Chamber to extend the deadline for its response to the Prosecution Appeal to 7 January 2022.

II. Confidentiality

5. Pursuant to Regulation 23*bis*(2) of the Regulations of the Court, this Request has been filed confidentially as it makes reference to confidential Defence activities. A public redacted version will be filed forthwith.

III. Submissions

6. Pursuant to Regulation 35(2) of the Regulations of the Court, a time limit may be

¹ [ICC-01/12-01/18-1924](#). Judge Prost dissented from the Impugned Decision and issued a Dissenting Opinion: [ICC-01/12-01/18-1924-Anx.](#)

² [ICC-01/12-01/18-1966](#).

³ [ICC-01/12-01/18-1999](#).

⁴ [ICC-01/12-01/18-2034](#).

⁵ When leave to appeal under Rule 155 of the Rules of Procedure and Evidence is granted, the appellant must file, within ten days of notification of the decision granting leave to appeal, a document in support of the appeal: Regulation 65(4) of the Regulations of the Court, and responses to that document must be filed within ten days of notification of that document: Regulation 65(5).

extended if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard. For the following reasons, constituting good cause, the Defence respectfully requests that the Appeals Chamber extend the time limit for its response to the Prosecution Appeal of the Impugned Decision to 7 January 2022.

7. *First*, the introduction of P-0113's prior recorded testimony has been subject to protracted litigation.⁶ The two issues certified for appeal were not only subject to internal disagreement within the Chamber, but relate directly to the Majority's interpretation of Rule 68(2)(b) in relation to excerpts pertaining to Mr Al Hassan's acts and conduct, and the ultimate exclusion of P-0113's prior recorded testimony from evidence.⁷ Fair and efficient resolution thereof is fundamental to safeguard Mr Al Hassan's rights. The importance of these issues was further underlined by the Chamber itself, noting that appellate adjudication on the matter would "ensure that 'the proceedings follow the right course'".⁸ It is in the interest of justice that an extension of time be granted to enable the Defence properly to prepare its response.
8. *Second*, the Defence has substantial commitments associated with the preparation of the Defence case and associated investigations over the course of the winter judicial recess. In recognition of the strain placed on the parties during the winter judicial recess, Trial Chamber X suspended its deadlines [REDACTED].⁹ The concurrent obligations facing the Defence include:
 - a. Submissions on Mr Al Hassan's monitoring conditions, due 17 January 2022;¹⁰
 - b. Responses to the Prosecution's Rule 68(2)(b) application concerning [REDACTED] and Rule 68(2)(c) application concerning [REDACTED];¹¹
 - c. Response to the Prosecution's Rule 68(2)(c) application concerning [REDACTED];¹²

⁶ [ICC-01/12-01/18-1207-Conf](#); [ICC-01/12-01/18-1252-Conf](#); [ICC-01/12-01/18-1402-Conf-Red](#); [ICC-01/12-01/18-1727-Conf](#); [ICC-01/12-01/18-1811-Conf](#); [ICC-01/12-01/18-1924](#); [ICC-01/12-01/18-1966](#); [ICC-01/12-01/18-1999](#); [ICC-01/12-01/18-2034](#).

⁷ [ICC-01/12-01/18-2034](#), paras. 5-8.

⁸ [ICC-01/12-01/18-2034](#), para. 8.

⁹ The Prosecution requested Trial Chamber X suspend its deadlines for the winter judicial recess, see Annex C.

¹⁰ [ICC-01/12-01/18-1827](#), para 3(b).

¹¹ Annex A; Annex B.

- d. Trial hearings in January 2022 for the hearing of Witnesses [REDACTED];
 - e. Preparing for the hearing of the Legal Representatives of Victims' case between 31 January 2022 and 11 February 2022;¹³ and
 - f. Preparation of the Defence case.¹⁴
9. Preparing submissions concerning a complex appeal of a Rule 68(2)(b) application while Defence resources are diverted elsewhere runs contrary to Mr Al Hassan's statutory rights to adequate time and facilities.¹⁵ When extending the time limits for responses to Rule 68(2) applications, the Single Judge of Trial Chamber X recently emphasised the 'volume of material expected to be submitted *and the current workload*' as salient factors in her decision to extend those time limits.¹⁶ Intricate appellate arguments compound matters further. Stretched Defence resources, furthermore, leave little latitude to accommodate complex litigation at an exceptionally busy period. Together, this constitutes good cause to grant the Defence the limited extension it seeks.
10. *Third*, the deadline falls in the middle of judicial recess. The Appeals Chamber in *Katanga and Ngudjolo* previously held that good cause was shown when a deadline for submission of a document was "unusual in that, over and above the fact that it falls during ... Court recess, [within a week that] comprises two public holidays and special days of leave."¹⁷ A similar situation applies in the instant case. The deadline for the Defence falls squarely within the winter judicial recess, between Christmas and New Year, in a week of which two days are public holidays and when the Defence will be operating at reduced capacity.
11. Similarly, in *Banda*, the Defence was granted an extension of time for a time limit which ran at the time of judicial recess due to, *inter alia*, the "unavailability of the relevant members of his defence team" at this given time.¹⁸ The [REDACTED] in difficult to reach locations. Such unavailability of relevant members of the Defence

¹² Annex A.

¹³ [ICC-01/12-01/18-1756](#), para 37.

¹⁴ [ICC-01/12-01/18-1756](#), paras 7-18.

¹⁵ Rome Statute, Article 67(1)(b).

¹⁶ Annex A, p. 2 (emphasis added); Annex B (also referencing "the expected workload for relevant period").

¹⁷ [ICC-01/04-01/07 \(OA2\)](#), para. 5. See also [ICC-01/04-01/07 \(OA\)](#).

¹⁸ [ICC-02/05-03/09-624 \(OA 5\)](#), para 6.

naturally also affects its ability to consult with the client, particularly as holiday leave of Registry staff will affect access to the Detention Unit. At the ICTR, in *Kajelijeli*, an inability of Counsel and client to communicate over a single weekend was found to constitute good cause for an extension.¹⁹ In the instant case, with such unavailability [REDACTED] and preceding immediately the existing deadline, good cause exists also in this regard.

12. *Fourth*, the proposed extension will not prejudice the expeditious resolution of this appeal or the conduct of the trial. The extension sought is limited and proportionate to the complexity of the issues traversed. It would allow the Defence to allocate the necessary time and resources to its response to the Prosecution Appeal, in a manner fully consistent with its other ongoing obligations.

13. *Finally*, upon *inter partes* consultation, the Prosecution informed the Defence that they do not object to the Defence being granted a short extension of time. While such consultations are not binding on the Appeals Chamber, they speak to the lack of prejudice that would arise from the requested extension, which is of a minimal nature.

IV. Relief

14. For these reasons, the Defence for Mr Al Hassan respectfully requests that the Appeals Chamber, pursuant to Regulation 35, vary the applicable time limit for its response to the Prosecution Appeal of the Impugned Decision to 7 January 2022.



Melinda Taylor
Counsel for Mr Al Hassan

Dated this 13th Day of December 2021
At The Hague, The Netherlands

¹⁹ See *Kajelijeli*, [Decision on Notice of Leave to File Extremely Urgent Motion for Permission to Supplement Defense's Detailed Explanation Filed on May 24 2004](#), ICTR-98-44A-A, 15 June 2004.