

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

**Original: English**

**No. ICC-01/12-01/18  
Date: 23 January 2023**

**TRIAL CHAMBER X**

**Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge  
Judge Tomoko Akane  
Judge Kimberly Prost**

**SITUATION IN THE REPUBLIC OF MALI**

**IN THE CASE OF  
*THE PROSECUTOR v. AL HASSAN AG ABDOUL AZIZ AG MOHAMED AG  
MAHMOUD***

**Public**

**Decision on Defence request for extension of time**

**To be notified in accordance with Regulation 31 of the *Regulations of the Court* to:****The Office of the Prosecutor**

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**TRIAL CHAMBER X** of the International Criminal Court, in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, having regard to Rule 68(2)(b) of the Rules of Procedure and Evidence (the ‘Rules’) and Regulations 34 and 35 of the Regulations of the Court (the ‘Regulations’), issues the following ‘Decision on Defence request for extension of time’.

## **I. Procedural history**

1. On 29 August 2022, the Chamber issued its ‘Sixth decision on matters related to the conduct of proceedings: end of Defence case, potential rebuttal/rejoinder evidence, and closure of evidence’ (the ‘Sixth Directions’) in which it, *inter alia*, set deadlines concerning the remainder of the Defence’s presentation of evidence and the submission of final briefs.<sup>1</sup>
2. On 21 September 2022, the Chamber authorised the introduction into evidence of D-0219’s prior recorded testimony pursuant to Rule 68(2)(b) of the Rules.<sup>2</sup>
3. On 10 November 2022, and in response to a request from the Defence, the Single Judge convened a meeting with the Defence and the relevant Registry sections to discuss logistical issues concerning the taking of accompanying declarations of Rule 68(2)(b) witnesses pursuant to Rule 68(2)(b)(ii) of the Rules.<sup>3</sup>
4. On 28 November 2022, the Single Judge issued an email decision, in which she decided that any request for the late introduction into evidence of prior recorded testimony must be submitted by 12 December 2022 at the latest and that any outstanding Rule 68(2)(b)(ii) declarations must be taken by 13 December 2022.<sup>4</sup>

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<sup>1</sup> ICC-01/12-01/18-2308.

<sup>2</sup> Decision on the introduction into evidence of the prior recorded testimony of D-0219 and D-0312 pursuant to Rule 68(2)(b) of the Rules, ICC-01/12-01/18-2343.

<sup>3</sup> See email from Trial Chamber to the Defence and Registry, dated 5 November 2022 at 12:59.

<sup>4</sup> Email from Trial Chamber to the parties and participants, dated 28 November 2022 at 16:25.

5. On 12 December 2022, the Defence filed a request seeking an extension until at least 29 December 2022 for the filing of the Rule 68(2)(b) request concerning D-0231.<sup>5</sup>
6. On 15 December 2022, the Single Judge convened an *ex parte* status conference with the Defence and the relevant sections of the Registry to discuss pending logistical issues related to the taking of the remaining Rule 68(2)(b)(ii) declarations and possible ways forward.<sup>6</sup> This included, *inter alia*, discussions concerning the remote certification of D-0219.
7. On 16 December 2022, the Chamber issued its ‘Decision on the Defence’s request for variation of the time limit related to the accompanying declarations of Rule 68(2)(b) witnesses and the introduction into evidence of the prior recorded testimony of D-0002 and D-0146 pursuant to Rule 68(2)(c) of the Rules’ in which it, *inter alia*, granted an extension until 11 January 2023 for the submission of a Rule 68(2) request for D-0231 and an extension until 23 January 2023 for the filing of all remaining accompanying declarations under Rule 68(2)(b)(ii) of the Rules.<sup>7</sup>
8. On 6 January 2023, the Defence submitted a request for judicial review of the Registrar’s decision concerning financial support to missions (the ‘Review Request’).<sup>8</sup>
9. On 13 January 2023, the Chamber rejected the Review Request and confirmed the Registrar’s decision.<sup>9</sup>
10. On 18 January 2023, the Defence filed a request seeking an extension of time for the filing of the accompanying declaration of D-0219 and the filing of a Rule 68(2)(b) Request and accompanying declaration for D-0231 (the ‘Request’).<sup>10</sup>

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<sup>5</sup> Application for an extension of time to file Defence Rule 68(2)(b) application for Witness D-0231, ICC-01/12-01/18-2441-Conf-Exp.

<sup>6</sup> ICC-01/12-01/18-T-212-CONF-EXP-ENG.

<sup>7</sup> ICC-01/12-01/18-2445-Conf-Exp.

<sup>8</sup> Email from the Defence to the Chamber and the Registry, dated 6 January 2023 at 10:35.

<sup>9</sup> Email from the Chamber to the Defence and the Registry, dated 13 January 2023 at 22:23.

<sup>10</sup> Defence Request for extension of time, ICC-01/12-01/18-2453-Conf-Exp.

11. On 20 January 2023, the Office of the Prosecutor (the ‘Prosecution’) responded to the Request, indicating that it defers to the Chamber.<sup>11</sup>
12. On 21 January 2023, the Legal Representatives of Victims responded to the Request, indicating that they defer to the Chamber.<sup>12</sup>

## **II. Analysis**

### **A. D-0219**

13. The Defence submits that the certification of D-0219’s prior recorded testimony could not be completed due to technical difficulties and, for reasons related to his work, the witness can only take part in any certification around the end of January 2023 (i.e. not before the 23 January 2023 deadline).<sup>13</sup>
14. At the outset, the Chamber recalls that the final witness called by the Defence testified on 3 November 2022 and, thereafter, the Chamber has granted several extensions in relation to the remaining deadlines. Particularly with respect to the taking of Rule 68(2)(b)(ii) declarations, the Chamber has facilitated this process by holding a meeting and a status conference and by issuing several directions. As noted by the Defence, the Chamber also recognises that the process has involved significant efforts on the part of the Registry.
15. The Chamber notes the reasons cited by the Defence for its inability to comply with the 23 January 2023 deadline and considers that there are reasonable prospects of concluding the taking of D-0219’s accompanying declaration with the extension sought. Accordingly, and notwithstanding the repercussions on the deadlines set by the Sixth Directions, the Chamber grants an extension until Friday, 3 February 2023 for the filing of D-0219’s accompanying declaration.
16. Nonetheless, the Chamber strongly emphasises that this is the final date on which the Defence may submit the declaration and no further extension will be granted. In this context, the Chamber recalls that under Article 64(2) of the Statute, Trial Chambers are ascribed the overall role to guarantee that the trial is both fair and

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<sup>11</sup> Email from the Prosecution at 10:30.

<sup>12</sup> Email from the LRVs at 10:46.

<sup>13</sup> Request, ICC-01/12-01/18-2453-Conf-Exp, paras 12-18.

expeditious. Expeditiousness is also an independent and important value in the Statute to ensure the proper administration of justice and is therefore more than just a component of the fair trial rights of the accused.<sup>14</sup> It is for this reason that under Article 64(2) of the Statute, Trial Chambers have the power to regulate the conduct of the parties and participants to ensure, *inter alia*, that such conduct does not cause undue delay to the proceedings.<sup>15</sup>

17. In line with the Sixth Directions,<sup>16</sup> the Defence must also notify the conclusion of its evidence presentation by way of a formal notice to be filed in the case record (the ‘Defence Notice’). This shall also be submitted by Friday, 3 February 2023.<sup>17</sup>

**B. D-0231 and deadline for other Rule 68(2)(b)(ii) declarations**

18. In the Request, the Defence notes that it sought ‘a suspension of all Rule 68 deadlines, before the expiration of the 11 January 2023 deadline’ but that the Chamber issued its decision only on 13 January 2023.<sup>18</sup> The Defence submits that the statement of D-0231 could not be finalised due to the cancellation of the mission but that it stands ready to put in place an alternative procedure that would allow D-0231 to confirm the contents of his prior recorded testimony.<sup>19</sup>
19. The Chamber recalls that, in support of the extension sought in the Review Request, the Defence argued, *inter alia*, that the anticipated time-table ‘has clear implications as concerns the ability of the Defence to ascertain whether [certain witnesses] are available or unavailable (within the framework of Rule 68(2)(c)) by 16 January, and its ability to submit certifications by 23 January [2023].’ Nowhere in the extension request did the Defence make reference to D-0231 or

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<sup>14</sup> Decision on the Defence notice on Mr Al Hassan’s unfitness to stand trial, 13 July 2020, ICC-01/12-01/18-952-Conf (the ‘Fitness Decision’), para. 19 *referring to* Appeals Chamber, *The Prosecutor v. Germain Katanga*, Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 20 November 2009 Entitled “Decision on the Motion of the Defence for Germain Katanga for a Declaration on Unlawful Detention and Stay of Proceedings”, 12 July 2010, ICC-01/04-01/07-2259 (hereinafter: ‘*Katanga* OA 10 Judgment’), paras 46-47.

<sup>15</sup> Fitness Decision, ICC-01/12-01/18-952-Conf, para. 19 *referring to* Appeals Chamber, *The Prosecutor v. Dominic Ongwen*, Judgment on the appeal of Mr Dominic Ongwen against Trial Chamber IX’s ‘Decision on Defence Motions Alleging Defects in the Confirmation Decision’, 17 July 2019, ICC-02/04-01/15-1562, para. 137; *Katanga* OA 10 Judgment, para. 53.

<sup>16</sup> Sixth Directions, ICC-01/12-01/18-2308, para. 6.

<sup>17</sup> The Defence Notice is without prejudice to subsequent requests for leave to appeal.

<sup>18</sup> Request, ICC-01/12-01/18-2453-Conf-Exp, para. 6.

<sup>19</sup> Request, ICC-01/12-01/18-2453-Conf-Exp, para. 8.

the 11 January 2023 deadline. The Chamber considers that the Defence erred by failing to indicate in a clear manner that the extension request contained in the Review Request included the 11 January 2023 deadline and thus failed to sufficiently motivate its request with respect to D-0231. Accordingly, in the Chamber's view, the Defence's failure to seek an extension before the expiration of the deadline is not justified.

20. However, the Chamber notes that granting the extension sought with respect to D-0231 would not have significant repercussions on the trial proceedings, given that the Chamber has already decided to grant an extension until 3 February 2023 with respect to D-0219. As the prior recorded testimony of D-0231 has already been made available to the parties,<sup>20</sup> there is also no prejudice that arises from granting the extension sought. Accordingly, the Chamber considers that it is in the interests of justice to grant the extension sought with respect to D-0231. The Chamber also considers that the alternative procedure proposed by the Defence<sup>21</sup> is a feasible alternative for finalising D-0231's prior recorded testimony.
21. Finally, while the Defence has only requested an extension with respect to D-0219 and D-0231, in light of the Chamber's conclusion in section II-A, the Chamber considers it appropriate to grant an extension until 3 February 2023 with respect to the filing of all outstanding Rule 68(2)(b)(ii) declarations, as to do so would have no significant repercussions on the expeditiousness of the trial proceedings. The Chamber reiterates that, given the extensive latitude already granted for the completion of the taking of the outstanding Rule 68(2)(b)(ii) declarations, considerations on the fair and expeditious conduct of the trial guard against the Chamber entertaining further requests for extension of time.

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<sup>20</sup> ICC-01/12-01/18-2441-Conf-AnxA.

<sup>21</sup> Request, ICC-01/12-01/18-2453-Conf-Exp, para. 8.

### C. Conclusion

22. For the foregoing reasons, the Chamber grants the Request and adopts the following deadlines:

- **23 January 2023:** the Defence to file any Rule 68(2)(b) request for D-0231 and the transcript of the witness's statement.
- **27 January 2023:** the Prosecution and the LRVs to file any responses to the Rule 68(2)(b) request for D-0231.
- **3 February 2023:** the Defence to file any outstanding Rule 68(2)(b)(ii) declarations, including those for D-0219 and D-0231.
- **3 February 2023:** the Defence to file the Defence Notice.
- **Within two days following the filing of the Defence Notice:** the Prosecution to file a formal notice concerning any potential rebuttal evidence.<sup>22</sup>

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

**GRANTS** the Request; and

**ADOPTS** the time limits stipulated at paragraph 22 of the present decision.

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

**Judge Antoine Kesia-Mbe Mindua**  
**Presiding Judge**

**Judge Tomoko Akane**

**Judge Kimberly Prost**

Dated this Monday, 23 January 2023

At The Hague, The Netherlands

<sup>22</sup> See Decision on the Defence requests for the admission of evidence from the bar table, 10 November 2022, ICC-01/12-01/18-2407, para. 23.