

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/12-01/18 OA3

Date: 4 March 2021

THE APPEALS CHAMBER

Before:

**Judge Luz del Carmen Ibáñez Carranza, Presiding
Judge Chile Eboe-Osuji
Judge Howard Morrison
Judge Piotr Hofmański
Judge Solomy Balungi Bossa**

SITUATION IN THE REPUBLIC OF MALI

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

Confidential document

Decision on the request for extension of time

Decision to be notified in accordance with regulation 31 of the Regulations of the Court to:

The Office of the Prosecutor

Fatou Bensouda, Prosecutor
Helen Brady

Counsel for the Defence

Melinda Taylor
Kirsty Sutherland

Legal Representatives of the Victims

Seydou Doumbia
Mayombo Kassongo
Fidel Nsita Luvengika

REGISTRY

Registrar

Peter Lewis

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud against the decision of Trial Chamber X entitled ‘Decision on application for notice of possibility of variation of legal characterisation pursuant to Regulation 55(2) of the Regulations of the Court’ of 17 December 2020 (ICC-01/12-01/18-1211-Conf),

Having before it the ‘Defence Request for Extension of Time to File Appeal of “Decision on Application for Notice of Possibility of Variation of Legal Characterisation Pursuant to Regulation 55(2) of the Regulations of the Court”’ of 1 March 2021 (ICC-01/12-01/18-1324-Conf),

Pursuant to regulation 35(2) of the Regulations of the Court,

Renders unanimously the following

DECISION

- 1) The time limit for the filing of the appeal brief in the above-mentioned appeal is extended to 16h00 on Friday, 12 March 2021.
- 2) The requests of the Prosecutor and the Legal Representatives of Victims for the same number of additional days to file their respective responses to the appeal brief are rejected.

REASONS

I. PROCEDURAL HISTORY

1. On 17 December 2020, Trial Chamber X (the ‘Trial Chamber’) issued a decision on the application of the Prosecutor for notice to be given under regulation 55(2) of the Regulations of the Court (the ‘Impugned Decision’).¹

¹ Decision on application for notice of possibility of variation of legal characterisation pursuant to Regulation 55(2) of the Regulations of the Court, ICC-01/12-01/18-1211-Conf.

2. On 18 January 2021, counsel for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (the 'Defence') requested leave to appeal the Impugned Decision in respect of five issues.² The Trial Chamber granted leave in respect of two of the five issues.³

3. On 1 March 2021, the Defence filed a request pursuant to regulation 35(2) of the Regulations of the Court seeking an extension of the time limit to file its appeal brief until 18 March 2021 (the 'Request').⁴ The Defence submits that it faces a 'heavy burden of work', including contemporaneous deadlines for written submissions and a 'rigorous' hearing schedule.⁵ The Defence annexes to its Request two tables outlining its short-term work obligations in this case.⁶

4. In the Request, the Defence has indicated the following about its consultations with the Prosecutor:

The granting of the requested extension would not prejudice the Prosecution. The Defence submits and anticipates that any extension afforded to the Defence should also be extended to the Prosecution. Upon consultation, the Prosecution informed the Defence that it has no objection to a reasonable extension of time, on the basis that it too receives the same number of additional days to file its response.⁷

The Prosecutor did not file a response to the Request.

5. On 3 March 2021, the Legal Representatives of Victims (the 'Victims') responded to the Request indicating that they do not oppose it but – referring to the

² Defence request for leave to appeal 'Decision on application for notice of possibility of variation of legal characterisation pursuant to Regulation 55(2) of the Regulations of the Court', ICC-01/12-01/18-1251-Conf.

³ Decision on Defence request for leave to appeal the 'Decision on application for notice of possibility of variation of legal characterisation pursuant to Regulation 55(2) of the Regulations of the Court', 24 February 2021, ICC-01/12-01/18-1319-Conf.

⁴ Defence Request for Extension of Time to File Appeal of 'Decision on application for notice of possibility of variation of legal characterisation pursuant to Regulation 55(2) of the Regulations of the Court', ICC-01/12-01/18-1324-Conf.

⁵ Request, para. 5.

⁶ See Request, Annex A (ICC-01/12-01/18-1324-Conf-AnxA) and Annex B (ICC-01/12-01/18-1324-Conf-AnxB).

⁷ Request, para. 7.

Prosecutor's position explained in the Request – that they would seek to benefit from a similar extension of time for their response to the appeal brief.⁸

II. MERITS

6. Pursuant to regulation 65(4) of the Regulations of the Court, an appellant has ten days from notification of the decision granting leave to appeal to file the appeal brief. Regulation 35(2) of the Regulations of the Court provides that a chamber may extend a prescribed time limit on the application of a party or participant if 'good cause is shown'. As noted by the Defence, the Appeals Chamber has in the past explained that 'good cause' may exist when a party has competing obligations in proceedings before the Court, resulting in the inability to meet a deadline.⁹

7. In support of its Request, the Defence explains that among its short-term obligations is a motion on the exclusion of evidence pursuant to article 69(7) of the Statute, currently due on the same day as the appeal brief (8 March).¹⁰ However, the Appeals Chamber notes that this is a motion for which the Defence has had several months to prepare,¹¹ and for which the Defence has already received an extension of time from the Trial Chamber.¹² Thus, the Appeals Chamber finds that good cause exists for only a moderate extension of the ten-day time limit for the appeal brief, and that granting the extension sought in full would not be reasonable under the circumstances. Rather, the Appeals Chamber finds that a moderate extension would fulfil the 'need to facilitate fair and expeditious proceedings' under the circumstances.¹³ The Appeals Chamber therefore grants an extension of the ten-day period to fifteen days,¹⁴ until

⁸ Réponse à la requête de la Défense aux fins d'extension de délai pour le dépôt du mémoire d'appel relatif à la « *Decision on Applications for Notice of Possibility of Variation of Legal Characterisation Pursuant to Regulation 55(2) of the Regulations of the Court* », ICC-01/12-01/18-1334-Conf, paras 8-9.

⁹ Request, para. 5, referring to *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, [Reasons for the 'Decision on the "Application for Extension of Time Limits Pursuant to Regulation 35 of the Regulations of the Court to Allow the Defence to Submit its Observations on the Prosecutor's Appeal regarding the Decision on Evidentiary Scope of the Confirmation Hearing and Preventative Relocation"'](#), 27 June 2008, ICC-01/04-01/07-653 (OA7), para. 5. *See also* [Decision on the 'Urgent request on behalf of Mr Ntaganda seeking an extension of time limit to submit the Document in Support of the Appeal'](#), 28 September 2016, ICC-01/04-02/06-1549 (OA4), para. 10.

¹⁰ Request, Annex B (ICC-01/12-01/18-1324-Conf-AnxB), p. 4.

¹¹ *E.g.* Trial Chamber X, [Decision on request for leave to submit amicus curiae observations](#), 2 December 2020, ICC-01/12-01/18-1177, para. 2.

¹² Requested by way of e-mail (25 February 2021), and granted by way of e-mail (1 March 2021).

¹³ Rule 101(1) of the Rules of Procedure and Evidence.

¹⁴ Under regulation 65(4) of the Regulations of the Court, time limits are calculated starting from the day of notification of the decision granting leave and in the manner prescribed by regulation 33 of the Regulations of the Court.

16h00 on Friday, 12 March 2021, for the filing of the appeal brief under regulations 64(2) and 65(4) of the Regulations of the Court.

8. The Appeals Chamber notes that as a consequence of this decision, pursuant to regulation 65(5) of the Regulations of the Court, the time limit for the responses of the Prosecutor and the Victims to the appeal brief will begin to run only once the appeal brief is notified. Therefore, there is no prejudice occasioned to them as regards the time available to them under the Regulations of the Court. However, regarding the requests of the Prosecutor and the Victims that they be granted 'the same number of additional days' to file responses to the appeal brief, the Appeals Chamber notes that they have not presented any reasons as to why 'good cause' may exist to do so, as required under regulation 35(2) of the Regulations of the Court. Thus, the Appeals Chamber rejects the requests of the Prosecutor and the Victims.

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



Judge Luz del Carmen Ibáñez Carranza
Presiding

Dated this 4th day of March 2021

At The Hague, The Netherlands