



Original: English

No. ICC-01/12-01/18 OA2

Date: 12 May 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 document

Order on the reclassification of documents

Order 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,

Having before it the ‘*Demande de reclassification de la « Réponse au mémoire d’appel de la Défense relatif à la ‘Decision on the urgent Defence request for a custodial visit on compassionate grounds’ (ICC-01/12-01/18-1227-Conf) » (ICC-01/12-01/18-1263-Conf)’ of 4 March 2021 (ICC-01/12-01/18-1338),*

Pursuant to regulation 23*bis*(3) of the Regulations of the Court,

Issues the following

ORDER

The Registrar is directed to reclassify as ‘public’ the following documents:

- ICC-01/12-01/18-1241-Conf
- ICC-01/12-01/18-1242-Conf
- ICC-01/12-01/18-1263-Conf
- ICC-01/12-01/18-1341-Conf

REASONS

1. On 23 December 2020, Trial Chamber X (the ‘Trial Chamber’) issued its decision on Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud’s (‘Mr Al Hassan’) request for temporary release on compassionate grounds (the ‘Impugned Decision’).¹ The Impugned Decision was classified as ‘confidential’.

2. On 4 January 2021, Mr Al Hassan filed a notice of appeal against the Impugned Decision (the ‘Notice of Appeal’), also classified as ‘confidential’.² Mr Al Hassan indicated that he would file a public redacted version of the Notice of Appeal ‘as soon as possible’.³

¹ Decision on the urgent Defence request for a custodial visit on compassionate grounds, ICC-01/12-01/18-1227-Conf.

² Defence Notice of Appeal of ‘Decision on the urgent Defence request for a custodial visit on compassionate grounds’, ICC-01/12-01/18-1236-Conf, with confidential annex (ICC-01/12-01/18-1236-Conf-Anx).

³ Notice of Appeal, para. 3.

3. On 6 January 2021, the Appeals Chamber rendered a decision on the Presiding Judge ('Decision on the Presiding Judge')⁴ and issued an order on the conduct of the appeal proceedings ('Order on the Conduct of the Proceedings').⁵ Both were classified as 'confidential'.

4. Mr Al Hassan filed two versions of the subsequent appeal brief; one as 'confidential, *ex parte*' and the other as 'confidential'.⁶ The responses of the Prosecutor and of the Legal Representatives of Victims ('Victims') were both filed on a 'confidential' basis.⁷

5. On 18 January 2021, the Trial Chamber filed a public redacted version of the Impugned Decision.⁸

6. On 22 February 2021, the Appeals Chamber delivered its judgment on Mr Al Hassan's appeal on a 'confidential' basis.⁹ The Appeals Chamber ordered the parties and participants to file public redacted versions of their submissions no later than 4 March 2021.¹⁰

7. On 1 March 2021, the Prosecutor filed a public redacted version of her response to the appeal brief¹¹ and, on 4 March 2021, Mr Al Hassan filed a public redacted version of his appeal brief.¹²

⁴ Decision on the Presiding Judge of the Appeals Chamber in the appeal of Mr Al Hassan against the decision of Trial Chamber X entitled 'Decision on the urgent Defence request for a custodial visit on compassionate grounds', ICC-01/12-01/18-1241-Conf.

⁵ Order on the conduct of the appeal proceedings, 6 January 2021, ICC-01/12-01/18-1242-Conf.

⁶ Defence Appeal of the Trial Chamber's "Decision on the urgent Defence request for a custodial visit on compassionate grounds", 14 January 2021, ICC-01/12-01/18-1249-Conf-Exp-Corr. The following day, Mr Al Hassan filed a confidential redacted version (ICC-01/12-01/18-1249-Conf-Red-Corr).

⁷ Prosecution's Response to Defence's "Appeal of the Trial Chamber's 'Decision on the urgent Defence request for a custodial visit on compassionate grounds'", 22 January 2021, ICC-01/12-01/18-1262-Conf; Réponse au mémoire d'appel de la Défense relatif à la « Decision on the urgent Defence request for a custodial visit on compassionate grounds », 22 January 2021, ICC-01/12-01/18-1263-Conf.

⁸ ICC-01/12-01/18-1227-Red.

⁹ Judgment on the appeal of Mr Al Hassan against the decision of Trial Chamber X entitled 'Decision on the urgent Defence request for a custodial visit on compassionate grounds' of 23 December 2020, ICC-01/12-01/18-1311-Conf ('Al Hassan OA2 Judgment').

¹⁰ Al Hassan OA2 Judgment, p. 3, paras 12-13.

¹¹ ICC-01/12-01/18-1262-Red.

¹² ICC-01/12-01/18-1249-Corr-Red2.

8. On 4 March 2021, the Victims filed a request seeking the reclassification as ‘public’ of their response to the appeal brief (‘Request for Reclassification’).¹³

9. On 5 March 2021, Mr Al Hassan filed a public redacted version of his notice of appeal,¹⁴ after the deadline set by the Appeals Chamber. Mr Al Hassan filed, simultaneously, a request pursuant to regulation 35(2) of the Regulations of the Court (‘Regulation 35(2) Request’), praying that the Appeals Chamber accept the filing of the public redacted version of the notice of appeal notwithstanding its late filing due to ‘inadvertence’.¹⁵ Mr Al Hassan filed the Regulation 35(2) Request as ‘confidential’, but indicated that he does not oppose its reclassification.¹⁶

10. Regulation 23*bis*(3) of the Regulations of the Court provides that a chamber may reclassify a document when the basis for the classification no longer exists. The Appeals Chamber finds that no reason exists for the Decision on the Presiding Judge and the Order on the Conduct of the Proceedings to remain confidential and directs that both documents be reclassified as ‘public’. The Appeals Chamber further finds that, as indicated in the Victims’ Request for Reclassification,¹⁷ no reason exists for the Victim’s response to the appeal brief to remain confidential and directs that it be reclassified as ‘public’. Finally, the Appeals Chamber notes that Mr Al Hassan does not oppose the reclassification of his Regulation 35(2) Request and, therefore, finds that no reason exists for it to remain confidential. Therefore, the Appeals Chamber directs that the Regulation 35(2) Request be reclassified as ‘public’.

¹³ *Demande de reclassification de la « Réponse au mémoire d’appel de la Défense relatif à la ‘Decision on the urgent Defence request for a custodial visit on compassionate grounds’ (ICC-01/12-01/18-1227-Conf) »* (ICC-01/12-01/18-1263-Conf), ICC-01/12-01/18-1338.

¹⁴ ICC-01/12-01/18-1236-Red.

¹⁵ Defence request under Regulation 35(2) to file a public redacted version of ICC-01/12-01/18-1236-Conf, 5 March 2021, ICC-01/12-01/18-1341-Conf, paras 5-6.

¹⁶ Regulation 35(2) Request, para. 4.

¹⁷ Request for Reclassification, para. 3.

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



Judge Luz del Carmen Ibáñez Carranza
Presiding

Dated this 12th day of May 2021

At The Hague, The Netherlands