

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

**Original: English**

**No. ICC-01/12-01/18 OA4**

**Date: 15 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**

**URGENT**

**Confidential document**

**Decision on the Defence 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**

Mr Karim A. A. Khan, Prosecutor  
Ms Helen Brady

**Counsel for the Defence**

Ms Melinda Taylor  
Ms Kirsty Sutherland

**Legal Representatives of the Victims**

Mr Seydou Doumbia  
Mr Mayombo Kassongo  
Mr Fidel Nsita Luvengika

**REGISTRY**

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**Registrar**

Mr Peter Lewis

The Appeals Chamber of the International Criminal Court,

In the appeal of the Prosecutor against the decision of Trial Chamber X entitled “Decision on second Prosecution request for the introduction of P-0113’s evidence pursuant to Rule 68(2)(b) of the Rules” of 15 November 2021 (ICC-01/12-01/18-1924),

Having before it the “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’” of 13 December 2021 (ICC-01/12-01/18-2067-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 Defence’s response to the appeal brief in the above-mentioned appeal is extended to 16h00 on Friday, 7 January 2022.
- 2) The Defence shall file a public redacted version of its request (ICC-01/12-01/18-2067-Conf) by Friday, 7 January 2022 at 16h00.
- 3) The participating victims may file a response to the appeal brief on or before Friday, 7 January 2022 at 16h00.

## REASONS

### I. PROCEDURAL HISTORY

1. On 15 November 2021, Trial Chamber X (hereinafter: “Trial Chamber”), by majority, rejected the Prosecutor’s second request to introduce evidence under rule 68(2)(b) of the Rules of Procedure and Evidence<sup>1</sup> (hereinafter: “Impugned Decision”).

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<sup>1</sup> Decision on second Prosecution request for the introduction of P-0113’s evidence pursuant to Rule 68(2)(b) of the Rules, ICC-01/12-01/18-1924.

2. On 22 November 2021, the Prosecutor applied for leave to appeal the Impugned Decision.<sup>2</sup>

3. On 6 December 2021, the Trial Chamber granted the Prosecutor's application, in part.<sup>3</sup>

4. On 13 December 2021, the Defence filed a request for an extension of time to respond to the Prosecutor's appeal of the Impugned Decision<sup>4</sup> (hereinafter: "Request"). The Prosecutor filed a response to the Request, indicating that he does not oppose it.<sup>5</sup>

## II. MERITS

5. Pursuant to regulation 65(4) of the Regulations of the Court (hereinafter: "Regulations"), the Prosecutor must file the appeal brief in this appeal within 10 days of the notification of the Impugned Decision, which is 17 December 2021. Responses to the appeal brief must be filed within ten days,<sup>6</sup> which in this appeal would be 30 December 2021.<sup>7</sup>

6. Regulation 35(2) of the Regulations 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 difficulties meeting a deadline that falls during a period of Court recess and public holidays.<sup>8</sup>

7. In its Request, the Defence seeks an extension of time to file its response to the Prosecutor's appeal brief until 7 January 2022.<sup>9</sup> In support of this extension, the

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<sup>2</sup> Request for Leave to Appeal the "Decision on second Prosecution request for the introduction of P-0113's evidence pursuant to Rule 68(2)(b) of the Rules", ICC-01/12-01/18-1966.

<sup>3</sup> Decision on Prosecution request for leave to appeal "Decision on second Prosecution request for the introduction of P-0113's evidence pursuant to Rule 68(2)(b) of the Rules", ICC-01/12-01/18-2034.

<sup>4</sup> 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", ICC-01/12-01/18-2067-Conf.

<sup>5</sup> Prosecution's Response to "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'", 14 December 2021, ICC-01/12-01/18-2071-Conf, para. 1.

<sup>6</sup> Regulation 65(5) of the Regulations.

<sup>7</sup> As counted according to Regulation 33 of the Regulations.

<sup>8</sup> Request, para. 10, referring to *The Prosecutor v. Germain Katanga*, Decision on the "Defence Application for Extension of Time to File document in Support of Appeal", 21 December 2007, ICC-01/04-01/07-121 (OA2), para. 5.

<sup>9</sup> Request, paras 4, 14.

Defence first underlines the importance of the Impugned Decision to the proceedings as a whole.<sup>10</sup> Second, the Defence describes its commitments in this case over the coming weeks.<sup>11</sup> Third, the Defence refers to the jurisprudence of this Court regarding the relevance of a judicial recess and its impact on the availability of counsel.<sup>12</sup> Fourth, the Defence submits that the proposed extension “will not prejudice the expeditious resolution of this appeal or the conduct of the trial”.<sup>13</sup> And fifth, the Defence advises that it has consulted the Prosecutor, who has indicated that he does not object to a short extension.<sup>14</sup> The Prosecutor has confirmed this.<sup>15</sup>

8. On the basis of the reasons for the Request given by the Defence, the Appeals Chamber finds that “good cause” exists for an extension of time within the meaning of regulation 35(2) of the Regulations. Therefore, noting that the Prosecutor does not object to a “short extension”, the deadline for the Defence’s response pursuant to regulation 65(5) of the Regulations is extended until 16h00 on Friday, 7 January 2022.

9. Although the victims have not requested a similar extension for the filing of a response, the Appeals Chamber further finds that granting such an extension to the victims would in any event be consistent with the “need to facilitate fair and expeditious proceedings” under the circumstances.<sup>16</sup> Therefore, the Appeals Chamber extends the deadline for the victims’ response to the appeal brief pursuant to regulation 65(5) of the Regulations to 16h00 on Friday, 7 January 2022.

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<sup>10</sup> Request, para. 7.

<sup>11</sup> Request, paras 8-9.

<sup>12</sup> Request, paras 10-11, referring to *The Prosecutor v. Germain Katanga*, Decision on the “Defence Application for Extension of Time to File Document in Support of Appeal”, 21 December 2007, ICC-01/04-01/07-121 (OA2), para. 5; *The Prosecutor v. Germain Katanga*, Decision on the “Prosecution’s Urgent Application for Extension of Time to File Document in Support of Appeal”, 18 December 2007, ICC-01/04-01/07-115 (OA), para. 6; *The Prosecutor v. Abdallah Banda Abakaer Nourain*, Decision on Mr Banda’s request for extension of time for the filing of a document in support of the appeal, 24 December 2014, ICC-02/05-03/09-624 (OA5), para. 6.

<sup>13</sup> Request, para. 12.


<sup>14</sup> Request, para. 13.

<sup>15</sup> Prosecution’s Response to “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’”, 14 December 2021, ICC-01/12-01/18-2071-Conf, para. 1.

<sup>16</sup> Rule 101(1) of the Rules of Procedure and Evidence.

10. Finally, the Appeals Chamber notes that the Request is filed as “confidential”, and the Defence has indicated that it will file a public version “forthwith”.<sup>17</sup> The Appeals Chamber instructs the Defence to do so by Friday, 7 January 2022.

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



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**Judge Luz del Carmen Ibáñez Carranza**  
**Presiding**

Dated this 15th day of December 2021

At The Hague, The Netherlands

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<sup>17</sup> Request, para. 5.