

**Cour
Pénale
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**International
Criminal
Court**

Original: **English**

No.: **ICC-02/05-01/20**
Date: **21 November 2025**

THE APPEALS CHAMBER

Before: Judge Erdenebalsuren Damdin, Presiding
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze
Judge Keebong Paek

SITUATION IN DARFUR, SUDAN

**IN THE CASE OF
THE PROSECUTOR V. ALI MUHAMMAD ALI ABD-AL-RAHMAN
(“ALI KUSHAYB”)**

Public

Prosecution Response to “Defence Application under Article 67(1)(f) of the Rome Statute, Rule 144(2)(b) of the Rules of Procedure and Evidence, and Regulation 58(1) of the Regulations of the Court”

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INTRODUCTION

1. To give effect to article 67(1)(f) of the Statute and rule 144(2)(b), the Defence argues that the Appeals Chamber must suspend or vary the ‘notification’ date from which is calculated the deadline to file its appeal brief against the conviction of Mr Abd-Al-Rahman, under regulations 31 and 58(1).¹ Since the Defence anticipates receiving translations of relevant portions of the trial judgment on 15 December 2025,² the deadline for its appeal brief would therefore be on 16 March 2026.³ This is approximately 10 weeks (70 days) later than the deadline as presently understood, which is 5 January 2026.

2. The Prosecution does not subscribe to all of the Defence’s reasoning, but nonetheless concludes that there is good cause for an extension of time to file the appeal brief, until 2 March 2026 (8 weeks, or 56 days). A *proprio motu* extension by the Appeals Chamber will facilitate rather than impede a fair and expeditious hearing of the relevant issues on appeal, bearing in mind: (i) that the Defence did not seek an extension of time to file its notice of appeal, and; (ii) the common procedural interest in receiving a single, focused, and comprehensive appeal brief, which will facilitate expeditious responses by the Prosecution and the participating victims.

SUBMISSIONS

3. The Prosecution agrees that Mr Abd-Al-Rahman has a right to such translations of the trial judgment as necessary to meet the requirements of fairness.⁴ Implicit within this right is the critical assessment of *when* and *to what extent* such translations must be made available, within the overall context of the proceedings. In this regard, the Appeals Chamber has recalled its duty to “ensure that [...] appellate proceedings advance *both fairly and expeditiously*”, including by ensuring that the accused person has “the opportunity to provide meaningful input in relation to th[e] appeal.”⁵

4. As the Defence properly acknowledges,⁶ the right of the accused person to such translations as necessary to meet the requirements of fairness does not therefore imply the right

¹ See [ICC-02/05-01/20-1269](#) (“Request”), para. 13, Disposition.

² See [Request](#), paras. 14-15, Disposition.

³ See [Request](#), Disposition (requesting the Appeals Chamber to find “that the 90 days’ time limit for submission of the Defence Appeal Brief [...] starts running from the date of reception of the relevant portions of the Trial Judgment in the language the Appellant understands and speaks”).

⁴ See [Statute](#), art. 67(1)(f) (providing, materially, that “the accused shall be entitled” to “such translations as are necessary to meet the requirements of fairness”); [ICC RPE](#), rule 144(1) and (2)(b) (further specifying that a “cop[y] of any decision concerning “criminal responsibility of the accused” shall be “provided as soon as possible” to the accused, “in a language he or she fully understands or speaks, if necessary to meet the requirements of fairness under article 67, paragraph 1 (f)”).

⁵ [ICC-02/11-01/15-1289 A](#) (“*Gbagbo* Extension of Time Decision”), para. 23 (emphasis added).

⁶ [Request](#), para. 4.

to “a *full* translation” of the trial judgment “before filing a notice of appeal”.⁷ Rather, in determining the appropriate procedure, the Appeals Chamber “must also take into account the *circumstances as a whole* and the convicted person’s ability to understand the details of his conviction by other means.”⁸ This balancing exercise is appropriate, not least due to the potentially countervailing interest of the accused person also in expeditious proceedings—especially since, if convicted, they will generally be maintained in custody.⁹

5. Consequently, the Appeals Chamber has in past cases taken two broad approaches when adapting the procedure on appeal to give effect to the article 67(1)(f) and rule 144(2)(b) rights of an accused person, in the circumstances of the case as a whole. To the Prosecution’s knowledge, the Appeals Chamber has never *completely* refused to adapt the procedure on appeal to ensure that a convicted person has such translations of the trial judgment as necessary to meet the requirements of fairness.¹⁰ However, depending on the circumstances, it has made procedural accommodations at different points.

- In earlier cases, such as in *Katanga*, the Appeals Chamber rejected a request to extend the time limit for filing a notice of appeal in light of the article 67(1)(f) and rule 144(2)(b) rights of the convicted person, but granted such an extension for the appeal brief.¹¹ A similar approach was taken in the *Bemba* and *Bemba et al.* cases, but subject to the Defence providing more detailed interim notice of the potential grounds of appeal.¹²
- More recently—and perhaps as a consequence of its prior requirement for more detailed interim notice of potential grounds of appeal—the Appeals Chamber has granted requests to extend the time limit for filing a notice of appeal, in order to ensure that a convicted

⁷ [ICC-02/04-01/15-1781 A](#) (“*Ongwen* Extension of Time Decision”), para. 10 (emphasis added). See also [ICC-01/14-01/18-2794 A](#) (“*Yekatom and Ngaïssona* First Extension of Time Decision”), para. 11; [ICC-01/14-01/18-2828-Red A A2 A3](#) (“*Yekatom and Ngaïssona* Second Extension of Time Decision”), para. 21.

⁸ [Ongwen Extension of Time Decision](#), para. 10 (emphasis added). See also [Yekatom and Ngaïssona First Extension of Time Decision](#), para. 11.

⁹ See e.g. [Ongwen Extension of Time Decision](#), para. 11 (taking into account that the convicted person “would be detained throughout the period requested awaiting the translation in order to file his notice of appeal”).

¹⁰ While the Appeals Chamber did recently refuse a request for extension of time based in part on translation issues, this was in circumstances where the Appeals Chamber had *already* considered this to show good cause for the purpose of granting an extension of time to file the notice of appeal, and in the context of its view that the possibility of alternative procedures further ensured adequate protection of the rights of the convicted persons: [Yekatom and Ngaïssona Second Extension of Time Decision](#), paras. 19-23. See also [ICC-01/14-01/18-2842 A A2 A3](#) (“*Yekatom and Ngaïssona* Third Extension of Time Decision”), paras. 16-17.

¹¹ See [ICC-01/04-01/07-3454 A](#) (“*Katanga* Extension of Time Decision”), paras. 13-19.

¹² See [ICC-01/05-01/08-3370 A](#) (“*Bemba* Extension of Time Decision”), paras. 6, 8-9 (granting a 90-day extension on the basis that, *inter alia*, “parts” of the trial judgment “are being translated on a regular and expedited basis”, but requiring prior notice of, “at the very least, the legal findings” in the trial judgment that the convicted person “intends to challenge [...] without prejudice to the actual formulation of the grounds of appeal that he wishes to advance in the document in support of the appeal subsequently filed”).

person has timely access to translations at least of *discrete passages* of the trial judgment in order to identify the findings “to challenge on appeal”.¹³ Even so, this has not always precluded the further necessity to facilitate the provision of additional translations for the purpose of completing an appeal brief.¹⁴ The Appeals Chamber has also contemplated allowing a convicted person to “seek a variation of the grounds of appeal” once they receive “a translation of the sections of the [judgment] relevant to those grounds”,¹⁵ and then if necessary to file a supplemental brief in support of the varied grounds of appeal.¹⁶

6. Yet nothing in this practice means the Appeals Chamber need *suspend* the notification date of the trial judgment under regulation 31, or otherwise vary the point at which time starts to run for the purpose of appeal proceedings—including, but not limited to, the filing of an appeal brief under regulation 58(1). To the contrary, the legal texts of the Court already make express provision for the relief requested by the Defence, by allowing *extension* of relevant time periods where good cause is shown.¹⁷ There is no reason not to follow this well-established approach. Rather, as the Appeals Chamber noted in *Katanga*, where the Court’s legal texts provide an extension procedure of this kind, this procedure should be followed.¹⁸

¹³ See e.g. [Ongwen Extension of Time Decision](#), para. 12 (granting a 45-day extension of time to file a notice of appeal in order to allow the convicted person, “with the assistance of counsel, [...] a meaningful opportunity to identify which parts of the Conviction Decision he intends to challenge on appeal”, with the benefit of “sections” of the trial judgment not exceeding 25 pages “to be prioritised for translation”). See further e.g. [ICC-01/04-02/06-2364 A](#) (“*Ntaganda* First Extension of Time Decision”), paras. 5-6 (granting a 30-day extension of time to file a notice of appeal taking into account, *inter alia*, that the convicted person “awaits the translation of parts” of the trial judgment); [ICC-01/12-01/18-2606 A](#) (“*Al Hassan* First Extension of Time Decision”), paras. 7, 13-14 (granting a 35-day extension of time to file a notice of appeal taking into account “the need to translate into Arabic the critical parts” of the trial judgment); [Yekatom and Ngaïssona First Extension of Time Decision](#), paras. 10-13 (granting an extension of time to file a notice of appeal taking into account, by implication, the need at least for “translation of the most essential parts of the trial judgment” or alternative—and potentially more time consuming—ways of ensuring that the convicted persons were adequately informed of the judgment such as by “internal translations”, and “individual meetings and telephone conversations” with counsel).

¹⁴ See e.g. [ICC-01/04-02/06-2415 A](#) (“*Ntaganda* Second Extension of Time Decision”), paras. 12-16 (granting a further 100-day extension of time to file a brief in support of those grounds of appeal for which the convicted person required translation of further passages of the trial judgment); [ICC-01/12-01/18-2647 A](#) (“*Al Hassan* Third Extension of Time Decision”), paras. 17-18 (granting a further 28-day extension of time to file the appeal briefs of the parties). Likewise, where the Prosecution has appealed against an acquittal, the Appeals Chamber has allowed for the provision of relevant translations before requiring the accused person to file their response: see [Gbagbo Extension of Time Decision](#), paras. 23-25.

¹⁵ [Ongwen Extension of Time Decision](#), para. 11. See also [Yekatom and Ngaïssona First Extension of Time Decision](#), para. 12; [Yekatom and Ngaïssona Second Extension of Time Decision](#), para. 21.

¹⁶ See e.g. [Yekatom and Ngaïssona Second Extension of Time Decision](#), para. 21.

¹⁷ See [ICC RPE](#), rule 150(2) (providing for the Appeals Chamber to “extend the time limit [for notices of appeal] set out in sub-rule 1, for good cause, upon application”); [Regulations of the Court](#), reg. 35(1) (providing for “[a]pplications to extend or reduce any time limit as prescribed in these Regulations or as ordered by the Chamber”).

¹⁸ [Katanga Extension of Time Decision](#), para. 11 (for this reason, rejecting the Defence request to “order that notification of the [trial judgment] should be deemed to have taken place only with the notification of the [...] translation of that decision” such that “the time limits for the filing of the notice of appeal [...] and of the document

7. Indeed, the Defence has already accepted the validity of the notification date of the trial judgment for the purpose of filing its notice of appeal under rule 150.¹⁹ It would be contradictory now to suggest that Mr Abd-Al-Rahman had never been duly notified of the judgment at all. Nor does the Defence offer any explanation why the Request could not have been framed simply as a request under regulation 35(1), which seems to be purely a matter of litigation strategy.²⁰

8. Notwithstanding the framing of the Request, the Prosecution nonetheless considers that the Defence has shown good cause for an extension of time to file the appeal brief. This arises not only from Mr Abd-Al-Rahman's right to such translations of the trial judgment as necessary to meet the requirements of fairness, but critically also from the interest in procedural economy.

- First, the Request shows a reasonable basis to anticipate that some extension of time will likely be necessary to ensure that Mr Abd-Al-Rahman receives such translations as necessary to meet the requirements of fairness in the preparation of the appeal brief on his behalf.²¹
- Second, the Prosecution recalls that the Defence did not request any extension of time for filing its notice of appeal. In its Request, the Defence also expressly seeks “a reasonable middle ground” when ensuring that the necessary translations are provided on a timely basis to allow the filing of the appeal brief, “compliant with Mr Abd-Al-Rahman's right to be tried without undue delay.”²² Due recognition is warranted of the Defence's own efforts towards the expeditious conduct of proceedings.
- Third, denying a reasonable extension of time at this stage may be counter-productive, insofar as it may increase the likelihood of the Defence seeking to vary or supplement its notice of appeal and/or appeal brief at a future date—that is, after the Prosecution and the participating victims have already begun working on (or even completed) their responses to the appeal brief. While such requests under regulation 61 remain a mechanism of last resort, they are otherwise deleterious to procedural economy and should be avoided

in support of the appeal would commence to run only with such notifications”). See also [Bemba et al. First Extension of Time Decision](#), paras. 3, 7, 17-18 (implicitly rejecting the request by Mr Babala for time to run only on the date at which the translation is notified, and instead treating the matter as a request for extension of time under regulation 35).

¹⁹ See e.g. [ICC-02/05-01/20-1261](#) (“Notice of Appeal”). See also [Request](#), para. 1.

²⁰ Cf. [Request](#), para. 7 (“The present application is not an application [...] pursuant to Regulation 35 [...]. Should the Defence come to the conclusion that it needs an extension of time to submit its Appeal Brief [...] it will then submit a different application, premised on the requirements of ‘good cause’”).

²¹ [Request](#), paras. 9, 14.

²² [Request](#), para. 14.

where possible. They potentially lead to wasted effort by the Parties and participants, to a proliferation of filings in the record, and tend to undermine the clarity and focus of the Parties' and participants' legal submissions. This in turn may tend to impede the expeditious conduct of the remainder of the appeal proceedings by the Appeals Chamber, and its deliberations.

9. In these circumstances, the Prosecution submits that the Appeals Chamber should *proprio motu* grant a reasonable extension of time. This is likely to help all the Parties and participants provide clearer and more comprehensive legal submissions, which will facilitate the fair and expeditious hearing of the appeal by the Appeals Chamber.²³

10. With regard to the duration of any extension of time, the Prosecution submits that the legitimate interests underlying the finding of good cause can be served by a slightly more modest extension than proposed. While the effect of the Defence position in the Request would be equivalent to an extension of 70 days from the existing deadline,²⁴ the Prosecution submits that an extension of 56 days would be reasonable in the circumstances. On this basis, the appeal brief would be due on 2 March 2026.

11. Such an extension would still afford Mr Abd-Al-Rahman (and the Defence) a period of approximately 77 days to *review* (and if necessary amend) the draft appeal brief in light of the translations provided to them on 15 December 2025²⁵—but also takes due account of the likelihood that the Defence will *already* have made good progress to date at least in preparing initial drafts, such that the time already elapsed has not been wasted. The fact that the Defence was able to prepare and file a notice of appeal within the ordinary deadline under rule 150 speaks to the effective working arrangements which have been adopted by counsel to help Mr Abd-Al-Rahman appreciate the critical findings in the trial judgment, and to form an appropriate overall strategy for his defence on appeal.²⁶ It is not the case that *all* stages of

²³ If it considers necessary, the Appeals Chamber could state in any order granting an extension of time to file the appeal brief that—as a consequence—it is unlikely to entertain any future Defence request to amend or supplement its appeal brief once filed, barring exceptional circumstances.

²⁴ This differs from the reference in the Request to “90 days” because the anticipated date of delivery of the relevant translations (15 December 2025) falls approximately three weeks *before* the current deadline for submitting the appeal brief under regulation 58(1).

²⁵ In other words, this amounts to a very substantial proportion of the 90-day period ordinarily contemplated in regulation 58(1) for completion of an appeal brief.

²⁶ In the Prosecution's respectful submission, this remains true notwithstanding the proviso in the Notice of Appeal that the grounds of appeal identified therein are “provisional” and that the Defence may request permission to vary its grounds of appeal “once in receipt of the Arabic version of the Trial Judgment and its Annex B and after having received full instructions from Mr Abd-Al-Rahman”: [Request](#), para. 10 (citing [Notice of Appeal](#), paras. 3-4).

preparation of the appeal brief are contingent upon explaining the judgment to Mr Abd-Al-Rahman in detail.²⁷

12. Finally, the Prosecution notes that the Request appears to be made conditional upon certain independent circumstances, namely the Registrar's reversal of the decision denying a full time Language Assistant to the Defence and the timely completion to the Defence of the translation of all the requested portions of the trial judgment by 15 December 2025.²⁸ This is inappropriate, and unnecessary. While the facts in the Request do (in the view of the Prosecution) show good cause for an extension of time to file the appeal brief, the Defence fails to show the necessity of either of the conditions to which it refers. These should be rejected, and the Appeals Chamber should set a concrete timetable upon which all Parties and participants may reasonably rely.

CONCLUSION

13. For the reasons set out above, the Prosecution does not oppose the Appeals Chamber extending the deadline for filing the appeal brief in this case to 2 March 2026, which it may do *proprio motu*.



Nazhat Shameem Khan, Deputy Prosecutor

Dated this 21st day of November 2025

At The Hague, the Netherlands

²⁷ Cf. [Request](#), para. 12 (“in the absence of translation of the selected portions of the Trial Judgment and its Annex B, progress made in explaining the Trial Judgment to Mr Abd-Al-Rahman is going at a very slow pace and constitutes a major impediment in the preparation of the Appeal Brief”).

²⁸ See [Request](#), paras. 14-15 (“If these two conditions [...] are fulfilled, a reasonable solution [...] could be that the 90 days’ time limit to submit the Defence Appeal Brief should start running from the date of reception of the Arabic version of the relevant portions of the Trial Judgment”), Disposition.