

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-01/20
Date: 02 December 2025

TRIAL CHAMBER I

Before: Judge Joanna Korner, Presiding Judge
Judge Reine Adélaïde Sophie Alapini-Gansou, Judge
Judge Althea Violet Alexis-Windsor, Judge

SITUATION IN DARFUR, SUDAN

IN THE CASE OF
THE PROSECUTOR v. ALI MUHAMMAD ALI ABD-AL-RAHMAN ("ALI KUSHAYB")

Public

Public redacted version of
Reply to the Prosecution and Legal Representatives of Victims' Submissions
ICC-02/05-01/20-1248-Conf and ICC-02/05-01/20-1249-Conf

Source: Defence for Mr Ali Muhammad Ali Abd-Al-Rahman

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

☒ The Office of the Prosecutor

☒ Counsel for the Defence

☒ Legal Representatives of the Victims

☐ Legal Representatives of the Applicants

☐ Unrepresented Victims

☐ Unrepresented Applicants
(Participation/Reparation)

☐ The Office of Public Counsel for Victims

☒ The Office of Public Counsel for the Defence

☐ States' Representatives

☐ Amicus Curiae

REGISTRY

Registrar

Mr Zavala Giler, Osvaldo

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and
Reparations Section

☐ Other
Division of Judicial Service Director

1. As instructed by Trial Chamber I (“the Chamber”), the Defence for M. Abd-Al-Rahman (“The Defence”, “M. Abd-Al-Rahman”) files the present submissions in reply (“the Reply”) to the submissions of the Office of the Prosecutor (“the Prosecution”) (ICC-02/05-01/20-1248-Conf) and the Legal Representatives of Victims (“the LRVs”) (ICC-02/05-01/20-1249-Conf) in response (“the Responses”) to its request to present additional evidence for sentencing (ICC-02/05-01/20-1243-Conf, “the Request”). The Reply is filed within the time limit and limited to the two issues set by the Chamber in its email authorizing its submission.¹
2. Pursuant to Regulation 23*bis*(2) of the Regulations of the Court, the Reply is filed under the same classification as the Responses.

FIRST ISSUE: APPEARANCE OF WITNESSES D-0040 AND D-0041

3. Witnesses D-0040 and D-0041 [REDACTED]. The Defence was only available to interact with them on the phone [REDACTED]. During these interactions, the Defence has informed both witnesses that they may be called to appear as witnesses before the Court [REDACTED]. The witnesses confirmed that they were aware of the possibility that they could be called to appear [REDACTED] both were also extremely reluctant about leaving their family unattended for an extended period. [REDACTED].
4. The Defence took note of their concerns, but did not insist more on the organization of their appearance for the following two reasons: (i) out of experience for its witnesses at trial, the Defence is aware [REDACTED] of the unpredictable delays that organizing their appearance has caused throughout the proceedings. We anticipated that sentencing proceedings would be short and would not allow for the organization of their appearance in a timely manner. Judicial economy converged with the imperatives of the witnesses’ safety towards the submission of

¹ Email from the Chamber, 28 October 2025, 11h40.

their statement pursuant to Rule 68(2)(b)(i) of the Rules of Procedure and Evidence ("RPE"), especially its 2nd, 3rd and 4th criteria; (ii) the Defence is also mindful of the standard of proof applicable to mitigating circumstances, i.e. balance of probabilities.² Witnesses D-0040 and D-0041's statements are strictly confined to mitigating circumstances in relation to M. Abd-Al-Rahman's character and role in his community since 2004; they have nothing to do with his acts and conducts in relation to the charges. Once again, read in light of the imperatives of judicial economy and the witnesses' safety and security, the relaxed standard of proof of mitigating circumstances on the balance of probabilities played in favour of the submission of Witnesses D-0040 and D-0041's statement pursuant to the procedure under Rule 68(2)(b) of the RPE, especially its 2nd, 3rd and 4th criteria.

5. At paragraph 11 of its Response, the Prosecution submits that the statements of Witnesses D-0040 and D-0041 address issues that are materially in dispute. Although this is only one of the various factors to be taken into account for admission under Rule 68(2)(b)(i) of the RPE, this submission is inaccurate. M. Abd-Al-Rahman's role in relation to the Ta'aisha-Salamat has nothing to do with the charges; it is not disputed that he was in Raad-El-Berdi by the time, working in the Central Reserve Forces and that he did play a role in relation to that conflict; the exact nature of his intervention in that conflict is essentially a matter of interpretation, but this has nothing to do with the charges. The video of the public speeches of M. Abd-Al-Rahman at *Um-Sory* and before the teachers is on record and beyond any possible dispute. The Prosecution did not submit evidence with respect to [REDACTED] and thus has no basis to dispute Witnesses D-0040 and D-0041's evidence of these aspects. Finally, Prosecution fails to provide, and the Defence fails to see any possible justification, for excluding the portions mentioned in footnote 27 of the Prosecution's submissions. These portions are far from

² *Lubanga* Decision on Sentence, [ICC-01/04-01/06-2901](#), para. 34; *Bemba* Decision on Sentence, ICC-01/05-01/08-3399, para. 19; *Ntaganda* Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 24.

essential, are entirely related to the background of the case and are supported by evidence on records, such as M. Abd-Al-Rahman's 2020 salary sheet³ and other Defence witnesses' statements.⁴

6. For the foregoing reasons, Witnesses D-0040 and D-0041 will not be able to appear before the Trial Chamber over the week of 17-21 November 2025. The Defence therefore reiterates its prayer to the Chamber to admit their written statements under Rule 68(2)(b) of the RPE.

SECOND ISSUE: DATE OF SUBMISSION OF THE EXPERT'S REPORT

7. The Defence has followed up with its Expert on the date of submission of his Final Report. This will deal with all issues [REDACTED]. The Expert committed to submit the Report before 30 October 2025. The Report will be immediately shared upon receipt.
8. At paragraphs 12 to 18 of its observations of Monday 27 October 2025,⁵ the Registry indicates that the issue of additional medical investigations recommended in the Defence Expert's initial Report are currently assessed by the Medical Officer and that *"the planning of medical tests and examinations requires appropriate time, a clear medical purpose, consideration of the Host State's available services and waiting lists, and reasoning is discussed directly between doctor and patient"*.⁶ No indicative time frame is provided. Once in receipt of the results of these additional investigations, the Defence will immediately transmit these to its Medical Expert for assessment and provisional of an additional report on the specific medical issues detected during

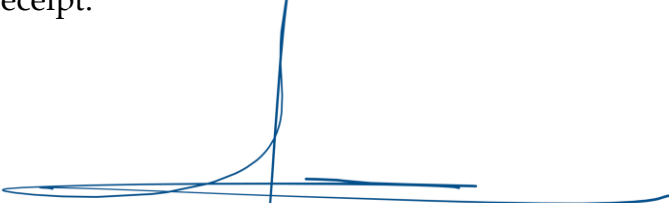
³ DAR-D31-0002-0002.

⁴ **D-0001**: T-154, p. 57, lines 22-25; **D-0002**: T-156, p. 60, lines 13-15 ; **D-0003** : T-155, p. 46, lines 18-20 ; **D-0007** : T-149, p. 28, lines 9-14 ; **D-0008** : T-139, p. 28, lines 2-8, p. 63, lines 5-7, p. 84, lines 13-24 ; **D-0011** : T-138, p. 52, lines 5-8 ; **D-0028** : DAR-D31-00000150, para. 23 ; **D-0029** : T-157, p. 25, lines 2-19 ; **D-0035**: DAR-D31-00000274, para. 23; **D-0039**: T-139, p. 34, lines 10-17, p. 79, lines 20-23.

⁵ ICC-02/05-01/20-1247-Conf, paras 12-18.

⁶ ICC-02/05-01/20-1247-Conf, para. 17.

his initial visit to M. Abd-Al-Rahman. This additional report will be immediately disclosed upon receipt.



Mr Cyril Laucci
Counsel for Mr Ali Muhammad Ali Abd-Al-Rahman

Dated this 02 December 2025

At The Hague, The Netherlands.