

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: **ICC-02/05-01/20**

Date: **27 May 2026**

THE APPEALS CHAMBER

Before: Judge Erdenebalsuren Damdin, Presiding Judge
Judge Luz del Carmen Ibañez Carranza
Judge Solomy 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

Defence Application for Leave to Reply

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

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I - INTRODUCTION

1. As instructed by the Honourable Appeals Chamber ("Appeals Chamber"),¹ the Defence for Mr Ali Muhammad Ali Abd-Al-Rahman ("Mr Abd-Al-Rahman", "Defence") applies for leave to reply to the Prosecution Response Brief (Conviction) on Appeal A submitted by the Office of the Prosecutor ("OTP", "Prosecution") on 17 April 2026 ("Response").²

2. After a careful study of the Prosecution Response Brief (Sentencing) on Appeal A3 of 11 May 2026,³ the Defence is of the considered view that the Prosecution does not engage with the Defence's Grounds of Appeal on Sentencing⁴ and, consequently, that there is no requirement for a reply thereto. The Defence refers instead to the arguments developed in its Sentencing Appeal Brief, as complemented, where relevant, in its forthcoming response to the observations of the Legal Representatives for Victims ("LRV") on Appeal A3 ("LRV's Observations on Sentencing"),⁵ to be filed by 12 June 2026.⁶

3. The Defence does not address any confidential matters contained in the Response and thus files this application for leave under the classification "public". For the sake of the publicity of the proceedings and ease of reference, the Defence looks forward to receiving a public redacted version of the Response and the LRV's Observations on Sentencing.

II – GROUNDS ON WHICH THE DEFENCE SEEKS LEAVE TO REPLY

4. The Defence confines its application for leave to reply to new issues raised for the first time in the Response which the Defence could not reasonably have anticipated, as

¹ ICC-02/05-01/20-1336 ("Decision on whether to hold a hearing and other directions"), 15 May 2026, para. 4.

² ICC-02/05-01/20-1320-Conf A ("Response Conviction"), 17 April 2026.

³ [ICC-02/05-01/20-1331](#), 11 May 2026.

⁴ [ICC-02/05-01/20-1312-Red](#), 10 March 2026.

⁵ [ICC-02/05-01/20-1332-Conf](#) A2 A3, 11 May 2026.

⁶ [Decision on whether to hold a hearing and other directions](#), para. 3.

identified below. Leave to reply is necessary in the interests of justice because the intended reply will address issues which are pertinent to the proper adjudication of the appeal.⁷ For all other aspects and Grounds of Appeal not listed below, the Defence refers to the arguments developed in its Appeal Brief on Appeal A.⁸

5. For the sake of clarity and efficiency, the Defence regroups the Grounds of Appeal which call for a joint reply.

Grounds of Appeal 1-5 (Jurisdiction and *Nullum Crimen Sine Lege*)

6. In its Response to the Defence's GoAs 1-5, the Prosecution raises the following arguments for the first time:

- At paragraphs 9 and 17-19, the Prosecution proposes a new interpretation of Article 22 of the Statute, according to which the objective foreseeability test under Article 22(1) should be disconnected from the way crimes are to be interpreted by the Court under Article 22(2). This submission directly impacts on the consideration of GoA 1, most specifically with respect to paragraphs 32, 34, 50-51 and 60 of the Trial Judgment;
- At paragraphs 10 and 22 to 23, the Prosecution suggests a reversal of the burden of proof according to which the Defence would bear the onus of demonstrating that domestic crimes under Sudanese law are not analogous to the charged crimes or, as an alternative, that the "broader" definition of domestic criminalisation encapsulates the charged crimes. This submission directly impacts on the consideration of GoAs 1, 2 and 3, most specifically with respect to paragraphs 34, 50-51 and 60 of the Trial Judgment; and
- At paragraphs 17 (footnotes 43-44), 19 (footnotes 50 and 52), 25 to 27, 32, 38-39 and 48, the Prosecution submits that the principle of legality would be satisfied

⁷ Regulation 60(1) of the RoC; *see Bemba*, Decision on Mr Bemba's request for leave to reply to the Prosecutor's Response to the Document in Support of the Appeal, 7 December 2016, [ICC-01/05-01/08-3480](#) A, para. 8.

⁸ [ICC-02/05-01/20-1303-Red](#): Public Redacted Version of Defence Appeal Brief, 30 January 2026.

in any event because of the customary international law nature of the crimes, replacing the Trial Chamber's approach in addressing the issue by a totally new reasoning that the Prosecution never proposed at trial and has even specifically dissociated from in its Final Brief.⁹ This submission also directly impacts on the consideration of GoAs 1 to 4, most specifically with respect to paragraphs 33-37, 41-45, 49-51 and 60 of the Trial Judgment.

These three submissions are made for the first time in the proceedings. They impact on a central issue which may be determinative of the entire outcome of the appeal. The Defence had no opportunity to address these in its arguments. Should the Appeals Chamber consider that the Prosecution's arguments have any merit and that they may rely on these in its deliberation, the interests of justice demand that the Defence should be given an opportunity to rebut these by way of a reply, to ensure that the Appeals Chamber has heard all arguments on these new and complex issues from both parties for its deliberation.

Grounds of Appeal 6-7 (Compliance with Article 4(2) of the Statute)

7. In its Response to the Defence's GoAs 6-7, the Prosecution raises the following arguments for the first time:

- At paragraphs 64-80 of its Response, the Prosecution relies for the first time in the proceedings on an appeal ruling issued in a different case with no representations made by the Defence;¹⁰
- At paragraph 85 of its Response, the Prosecution submits for the first time that the Vienna Convention on the Law of Treaties ("VCLT") does not apply to the Court, as an attempted justification for the non-publicity and non-registration of the agreement of 10 May 2021 signed between the Court and Sudan; and

⁹ [ICC-02/05-01/20-1206-Red](#), paras 664-666.

¹⁰ [ICC-02/05-01/09-397](#) OA2, paras 140-142.

- At paragraph 87 of its Response, the Prosecution makes for the first time a distinction between non-conformities with the Statute, according to which not every non-conformity renders a fair trial impossible, and suggests that the Defence would bear the onus of proving that the violation of Article 4(2) would fall under that category.

These three submissions are made for the first time in the proceedings. They impact on the central issue of fairness of the proceedings, which may be determinative of the entire outcome of the appeal. These submissions also directly impact on the consideration of GoAs 6 and 7, with respect to paragraphs 64 and 68-71 of the Trial Judgment. The Defence had no opportunity to address these in its arguments. Should the Appeals Chamber consider that the Prosecution's arguments have any merit and that they may rely on these in its deliberation, the interests of justice demand that the Defence should be given an opportunity to rebut these by way of a reply, to ensure that the Appeals Chamber has heard all arguments on these new and complex issues from both parties for its deliberation.

Grounds of Appeal 9 and 11 (Sudan's non-cooperation re. documents)

8. The Prosecution's submissions at paragraphs 109-110 should be dismissed *in limine*. The Prosecution attempts to re-litigate final rulings of the Trial Chamber according to which "*the principles of fairness of proceedings and the equality of arms, which form part of the rights accorded to the accused in proceedings before the Court under Article 67(1) of the Statute, mandate that the Defence be provided with documents it considers necessary for the preparation of its case*",¹¹ to minimise their implication on the fairness of the proceedings as not "*so essential*". But the Prosecution did not appeal the repeated rulings according to which the provision of documents was essential to the fairness of the proceedings. Its attempt to re-litigate these is thus not admissible and should be dismissed *in limine*.

¹¹ [ICC-02/05-01/20-590-Red](#); [ICC-02/05-01/20-695-Red](#); [ICC-02/05-01/20-806-Red](#); [ICC-02/05-01/20-1203](#).

9. GoAs 9 and 11 relate to issues which are at the heart of the principle of fairness of the trial proceedings; their resolution may result, alone or together with other GoAs, in the reversing of the Trial Judgment. These submissions also directly impact on the consideration of GoAs 9 and 11, most specifically with respect to paragraphs 64 and 91 to 96 of the Trial Judgment. Should the Appeals Chamber accept to consider the Prosecution's submissions on their merits and attach weight thereto, the interests of justice require that the Defence be given an opportunity to rebut these by way of a reply, to ensure that the Appeals Chamber is in possession of all arguments on these new and complex issues from both parties for its deliberation.

Ground of Appeal 12 (Witness Protection in Sudan)

10. At paragraph 132 of its Response, in relation to GoA 12, the Prosecution denies having its own witness protection services and submits that the Defence failed to adduce evidence in support of its submissions. It is the first time in the proceedings that the Prosecution makes such a curious submission. The Defence, indeed, had considered that providing evidence of the obvious, i.e. the existence of a witness protection service within the OTP was unnecessary, as this formed part of the institutional knowledge of the structure of the Court which should fall within the realm of judicial notice. But now that the Prosecution considers it appropriate to challenge it, the interests of justice require that the Defence be given an opportunity to rebut this submission by way of a reply, to ensure that the Appeals Chamber is in possession of all arguments from both parties for its deliberation and can properly adjudicate the Prosecution's denial of the true position, which is at the cost of judicial economy and fairness. The capacity of the Defence to rely on effective witness protection services for its witnesses lies at the heart of the principle of fairness of the proceedings, especially the right to obtain the appearance of witnesses before the Court as protected under Article 67(1)(e) of the Statute. The resolution of GoA 12 may result, alone or together with other GoAs, in the reversing of the Trial Judgment. The Prosecution's submission

also directly impacts on the consideration of GoA 12, most specifically with respect to paragraphs 64, 109-115 and 146-156 of the Trial Judgment.

Grounds of Appeal 13 (Sudan's non-cooperation re. issuance of visas) and 16-17 (Lack of Security Support)

11. At paragraphs 138 and 160 of its Response, the Prosecution submits that it is not in a position to answer the Defence's arguments because these rely on *ex parte* documents, and that GoAs 13 and 16-17 should be dismissed *in limine* accordingly. At paragraphs 143, 147 and 170, the Prosecution also seeks to draw an advantage from its alleged lack of information resulting from the current classification of the documents to reach inaccurate conclusions. The Prosecution's submissions directly impact on the consideration of GoAs 13 and 16-17, most specifically with respect to paragraphs 64-65 and 116-119 of the Trial Judgment. It is the first time that the Prosecution raises this issue in the proceedings. The Defence did not bear the burden of seeking the reclassification of the documents: under Regulation 23bis(3) of the RoC, the Prosecution had every opportunity to apply for their reclassification in a timely manner for the preparation of its Response. It did not, and does not, do so in its Response. Instead, the Prosecution attempts to instrumentalise the current classification of the documents to create a claim of impossibility to respond in order to prevent the consideration of GoAs 13 and 16-17 by the Appeals Chamber. The Prosecution's submissions under these GoAs 13 should be dismissed *in limine*, as the Prosecution cannot take advantage of its failure to apply for the reclassification of the documents in a timely manner.

12. The Defence would not have opposed the reclassification of the documents relied upon under GoAs 13 and 16-17 as "Confidential". As an alternative to the *in limine* rejection of the Prosecution's response on these three GoAs, the Defence does not oppose the resetting of the Prosecution's deadline to respond to these after

reclassification of the relevant documents, and reserves its right to seek leave to reply to the Prosecution's response on this limited matter.

Ground of Appeal 19 (Non-compliance with Information Protection Policies)

13. At paragraph 173 of its Response, with respect to GoA 19, the Prosecution submits for the first time in the proceedings that the scope of Article 69(7) should be restrictively interpreted as limited to violations of the Statute, excluding secondary legal texts, and human rights, and would not extend to non-compliance with the Court's administrative policies governing the handling of classified documents. This submission is made for the first time in the proceedings. The Defence had no opportunity to address it in its arguments. The issue addressed in GoA 19 directly impacts on the overwhelming majority of Prosecution witness statements presented at trial. The Prosecution's submission directly impacts on the consideration of GoA 19, most specifically with respect to paragraphs 64-65 and 138-145 of the Trial Judgment. The resolution of GoA 19 may result, alone or together with other GoAs, in the reversing of the Trial Judgment. Should the Appeals Chamber consider that the Prosecution's arguments have any merit and that they may rely on these in its deliberation, the interests of justice demand that the Defence should be given an opportunity to rebut these by way of a reply, to ensure that the Appeals Chamber has heard all arguments on these new and complex issues from both parties for its deliberation.

Ground of Appeal 21 (Page Limit to Defence Final Brief)

14. At paragraph 177 of its Response, the Prosecution submits for the first time that the page-limit set by the Trial Chamber for the Defence Final Brief was reasonable and that the Trial Chamber was already well-acquainted with the issues that the Defence intended to raise therein. At trial, the Prosecution had not opposed the Defence's request for extension of page limit to 370 pages; on the contrary, it asked for the

granting of the same number of pages for its own Final Brief.¹² The position of the Prosecution on GoA 21 is thus a radical departure from its position at trial and could not have reasonably been anticipated by the Defence. The issue addressed in GoA 21 directly impacts on the right to a fair hearing under Article 67(1) of the Statute. The Prosecution's submission directly impacts on the consideration of GoA 21 and paragraph 64 of the Trial Judgment, as well as all GoAs 22, 30, 33, 40, 73-74 and relevant paragraphs of the Trial Judgment listed at paragraph 140 of the Defence Appeal Brief. The resolution of GoA 21 may result, alone or together with other GoAs, in the reversing of the Trial Judgment. Should the Appeals Chamber consider that the Prosecution's arguments have any merit and that they may rely on these in its deliberation, the interests of justice demand that the Defence should be given an opportunity to rebut these by way of a reply, to ensure that the Appeals Chamber has heard all arguments on these new and complex issues from both parties for its deliberation.

Ground of Appeal 22 (Misrepresentations in Asylum Claims)

15. At paragraph 188 of the Reply, the Prosecution misrepresents the Defence's argument under GoA 22, which leads it to make unforeseeable submissions in response thereto: the Defence never suggested that the asylum status of several witnesses should be revoked due to their falsehoods,¹³ in particular with respect to Witnesses P-0584, P-0671, P-0720 and P-0935; instead, it focused its appeal on occasions where the Trial Chamber erred in the application of its own criteria when a witness admitted having lied in another procedure or dishonestly failed to mention certain facts, as set out in the Trial Judgment.¹⁴ The Prosecution's submission directly impacts on the consideration of GoA 22 and paragraphs 220-221, 250 and 577 (P-0935), 495 (P-0720), and 591 and 647 (P-0671) of the Trial Judgment. The resolution of GoA 22 may

¹² [ICC-02/05-01/20-1196](#), para. 1.

¹³ [Response Conviction](#), para. 188.

¹⁴ ICC-02/05-01/20-1240 ("[Trial Judgment](#)"), paras 220-221.

result, alone or together with other GoAs, in the reversing of the Trial Judgment. Should the Appeals Chamber consider that the Prosecution's arguments have any merit and that they may rely on these in its deliberation, the interests of justice demand that the Defence should be given an opportunity to rebut these by way of a reply, to ensure that the Appeals Chamber has heard all arguments on these new and complex issues from both parties for its deliberation.

Grounds of Appeal 24-26 (Double Standard in the Consideration of Evidence)

16. The Prosecution's submissions at paragraphs 195, 204 and 209-210 confirm the double standard in the consideration of the evidence by the Trial Chamber relied upon in the Defence's GoA 24-26 with respect to paragraphs 133, 198-201 of the Trial Judgment and paragraphs 27, 30, 66, 84, 97-99, 243, 255-257, 259, 264, 571-589, 610, 627-632, 636-637, 670-675 and 685-691, 754-756 of its Annex B: at paragraph 195 of its Reply, the Prosecution confirms that the Trial Chamber rejected Witness **D-0035**'s evidence without making any finding of lie or inconsistent evidence, unlike the more favourable treatment it gave to Witnesses **P-0769** and **P-0905** (GoA 24); at paragraph 204, the Prosecution acknowledges that the Trial Chamber "*considered certain factors in assessing certain Defence witnesses which it did not consider for certain Prosecution witnesses*", thereby confirming the double standard (GoA 25); similarly, at paragraphs 209-210, the Prosecution confirms the double standard applied by the Trial Chamber with respect to its absence of challenge to Witness **D-0016**'s evidence on the issue that it admitted being "*the heart of this case*"¹⁵ (GoA 26). These three grounds of appeal have a major impact on the Trial Judgment. The interests of justice require that the Defence be given an opportunity to underline how and to what extent the Prosecution's submissions confirm and validate its own arguments, so that the Appeals Chamber can draw all appropriate consequences thereof in its deliberation.

¹⁵ T-132, p. 67.

Ground of Appeal 29 (Reliance on Contemporaneous Notes)

17. At paragraphs 217-218, the Prosecution misrepresents the Defence's GoA 29 as an equality of arms argument. GoA 29 is based on error of law, not fairness of the proceedings. This misconstruction was thus not foreseeable. The Prosecution's submission directly impacts on the consideration of GoA 29 and paragraphs 21, 23 (**P-0012**), 248-249 (**P-0877**) and 254-256 (**P-0878**) of Annex B to the Trial Judgment. The resolution of GoA 29 may result, alone or together with other GoAs, in the reversing of the Trial Judgment. Should the Appeals Chamber consider that the Prosecution's arguments have any merit and that they may rely on these in its deliberation, the interests of justice demand that the Defence should be given an opportunity to rebut these by way of a reply, to ensure that the Appeals Chamber has heard all arguments on these new and complex issues from both parties for its deliberation.

Grounds of Appeal 30-38 (Defence Line 1: Alias)

18. In its Response to the Defence's GoAs 30-38 related to the Alias, the Prosecution raises the following arguments for the first time:

- At paragraphs 225 and 228, the Prosecution submits for the first time that a finding of the Trial Chamber that Mr Abd-Al-Rahman and *Ali Kushayb* were one and the same person did not equate to a finding that he was responsible for any of the alleged crimes in this case;
- At paragraphs 254-255 of its Response, the Prosecution submits for the first time that the burden of proof of the impact of the public attribution of the alias *Ali Kushayb* to Mr Abd-Al-Rahman on the credibility of the evidence, in particular of witnesses **P-0905** and **P-0935**, is on the Defence.

These two submissions are made for the first time in the proceedings. The Defence had no prior opportunity to address these. They impact on the central issue of evidence of

the alias, which the Trial Chamber had acknowledged as being “*the heart of this case*”.¹⁶ These submissions directly impact on the consideration of GoAs 31 and 35, most specifically with respect to paragraphs 238, 262-264, 270-271 and 658 of the Trial Judgment and paragraphs 231, 326-329 and 445-448 of its Annex B. Should the Appeals Chamber consider that the Prosecution’s arguments have any merit and that they may rely on these in its deliberation, the interests of justice demand that the Defence should be given an opportunity to rebut these by way of a reply, to ensure that the Appeals Chamber has heard all arguments on these new and complex issues from both parties for its deliberation.

Grounds of Appeal 40-53 (Defence Line 2: Authority over the *Janjaweed*)

19. In its Response to the Defence’s GoAs 40-53 related to proof of the Appellant’s authority over the *Janjaweed*, the Prosecution raises the following arguments for the first time:

- At paragraph 282, the Prosecution submits that it was not required to prove the nature and structure of the *Janjaweed*, nor the leadership position of Mr Abd-Al-Rahman. This is the first time this submission is made. Throughout the trial, the Prosecution sought to prove Mr Abd-Al-Rahman’s position of authority over the *Janjaweed*. Having failed to establish “*why a retired Musa’id in the medical corps of the SAF, who became a pharmacist, should have achieved such a position [as Janjaweed leader] in the area*”,¹⁷ the Prosecution now tries to argue that it did not have to. The Defence had no opportunity to address this suggested shift in the the Prosecution’s position in its Appeal, as it is made for the first time, in the Response;
- At paragraphs 284 and 302-305, the Prosecution submits that it never intended to base its demonstration of Mr Abd-Al-Rahman’s authority over the *Janjaweed*

¹⁶ T-132, p. 67.

¹⁷ [Trial Judgment](#), para. 983.

on the alleged title of *Agid-Al-Ogada*. This submission that is again made for the first time is in stark contradiction with the Prosecution's earlier submissions, such as at paragraph 90 of its Trial Brief¹⁸ or paragraph 128 of its Final Brief.¹⁹ Having failed to prove what an *Agid-al-Ogada* was and that Mr Abd-Al-Rahman was an *Agid-al-Ogada*, the Prosecution now tries to advance a position that this was not its case. The Defence had no opportunity to address this remarkable reshaping of the Prosecution's case, as the Prosecution had never done so before its Response;

- At paragraphs 286-287, the Prosecution reiterates the Trial Chamber's conclusion that the *de facto* authority of Mr Abd-Al-Rahman over the *Janjaweed* was supported by the evidence that (i) he led the *Janjaweed* in joint operations in Kodoom, Bindisi, Mukjar and Deleig, (ii) he oversaw the recruitment of *Janjaweed* members and the distribution of weapons, ammunitions, salaries and supplies to them, and (iii) he instructed lower ranking *Janjaweed* prior to and during the operations. It is the first time that the Prosecution submits that it has established the Appellant's *de facto* authority over the *Janjaweed* beyond reasonable doubt on the basis of these three elements only, without having to prove how, when and why he became a *Janjaweed* leader.

These three submissions are made for the first time in the proceedings. The Defence had no opportunity to address these. They impact on the central issue of evidence of the authority of Mr Abd-Al-Rahman over the *Janjaweed*. These submissions directly impact on the consideration of GoAs 40 and 45 to 47, most specifically with respect to paragraphs 658-680 and 983 of the Trial Judgment. Should the Appeals Chamber consider that the Prosecution's arguments have any merit and that they may rely on these in its deliberation, the interests of justice demand that the Defence should be given an opportunity to rebut these by way of a reply, to ensure that the Appeals

¹⁸ [ICC-02/05-01/20-550-Corr-Red2](#), para. 90.

¹⁹ [ICC-02/05-01/20-1206-Red](#), para. 128.

Chamber has heard all arguments on these new and complex issues from both parties for its deliberation.

Grounds of Appeal 54-57 (Defence Line 3: Mistake of Law)

20. At paragraphs 323-340, the Prosecution proposes a restrictive interpretation of the scope of Article 32(2) according to which a mistake of law may, under that provision, *“exclude criminal responsibility only when that mental element of the offence requires knowledge of a legal characteristic (legal appreciation)”*. This is the first time that the Prosecution makes this submission, or actually provides any argument in response to Defence Line 3. These submissions directly impact on the consideration of GoAs 54 and 56-57, most specifically with respect to paragraphs 34-35, 40-41, 49, 52-59, 287, 948 and 1004-1005 of the Trial Judgment. The Defence had no prior opportunity to address it. It impacts on a potential ground of exclusion of criminal responsibility for all crimes. Should the Appeals Chamber consider that the Prosecution’s arguments have any merit and that they may rely on these in its deliberation, the interests of justice demand that the Defence should be given an opportunity to rebut these by way of a reply, to ensure that the Appeals Chamber has heard all arguments on these new and complex issues from both parties for its deliberation.

Grounds of Appeal 77-78 (Intersectional Dimension of Persecution)

21. At paragraph 477 of its Response, the Prosecution suggests a reversal of the burden of proof, requiring proof of the socially constructed gender role perception in Sudan to be adduced by the Defence, instead of the Prosecution. It is the first time that this argument is raised in the proceedings. This Prosecution’s submission directly impacts on the consideration of GoAs 77-78 and paragraphs 787, 928-929 and 936-937 of the Trial Judgment. The resolution of GoAs 77-78 may result in the reversing of the conviction on Counts 11, 21 and 31. Should the Appeals Chamber consider that the Prosecution’s arguments have any merit and that they may rely on these in its deliberation, the interests of justice demand that the Defence should be given an

opportunity to rebut these by way of a reply, to ensure that the Appeals Chamber has heard all arguments on these new and complex issues from both parties for its deliberation.

III – OPPORTUNITY FOR AN ORAL HEARING

22. The Defence has taken note of the Appeals Chamber’s indication that, at this stage, no hearing is required for the determination of Appeals A, A2 and A3.²⁰ The Defence understands that the Appeals Chamber is of the view that the issues on these appeals are presented with sufficient clarity in its written submissions without need for additional arguments to assist it in its deliberations.²¹

23. One additional factor that the Appeals Chamber may find relevant to consider in exercising its discretion as to whether or not a hearing should take place after the replies is the particular importance, sensitivity and symbolic dimension of the present case for the affected populations in Sudan, for the Court and for Mr Abd-Al-Rahman himself: it is the first and so far only Sudanese case and case in a Situation referred to the Court by the Security Council under Chapter VII that has reached this advanced stage of proceedings. The Defence firmly maintains on appeal that Mr Abd-Al-Rahman is not guilty and demands his acquittal on all charges, and his immediate release, while the Prosecution submits that the convictions are safe and that the imposition of a sentence of life imprisonment is warranted. A hearing before the Appeals Chamber in such a case would certainly represent a major development for the population in Sudan, for the Court itself and for Mr Abd-Al-Rahman, perfectly illustrating Lord Hewart’s principle that *“It is not merely of some importance, but of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.”*²²

²⁰ [Decision on whether to hold a hearing and other directions](#), paras 11-12.

²¹ *Ngudjolo*, Scheduling order for a hearing before the Appeals Chamber, 18 September 2014, [ICC-01/04-02/12-199](#), para. 13.

²² *R v Sussex Justices, ex parte McCarthy*, 9 November 1923, [1924] 1 KB 256.

24. Moreover, the Appeals Chamber's indication represents a significant departure from previous and consistent practice before the Court that substantive appeals against judgments in core crimes trials,²³ whether judgments of conviction or acquittal, include hearings at which oral arguments are presented.²⁴ Even if it is the case that the decision whether to hold oral hearings is a discretionary one, it is respectfully submitted that the Appeals Chamber should be slow to deprive Mr Abd-Al-Rahman of the opportunity to have final pleadings in his case made on his behalf in circumstances where, given his advanced age, he faces the very real prospect of spending the rest of his life in prison, whether or not the Prosecution's appeal against sentence is allowed. The present circumstances are very different to interlocutory appeals where the issues are often very narrowly circumscribed and where it may very well be the case that the Appeals Chamber can adequately deal with the matter on the papers. An appeal against a judgment of conviction is an order of magnitude more complex and more consequential. For this reason, it is likely that the Appeals Chamber will have questions for and will want to engage with the Parties. The Defence, for one, would welcome this opportunity. Should the Appeals Chamber consider convening a hearing, the Defence will address any question or issue that the Appeals Chamber may have and present its ultimate arguments on the appeals.²⁵

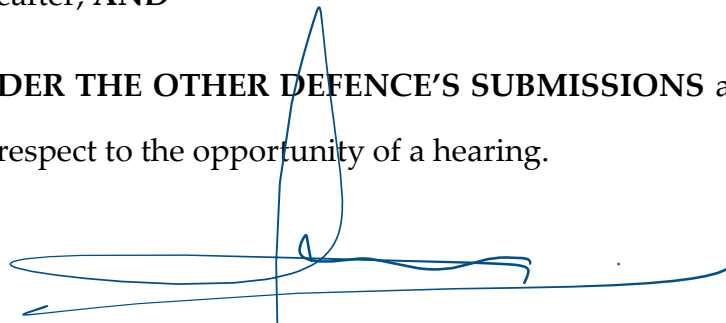
²³ That is, excluding Article 70 cases.

²⁴ See for example *Lubanga*, oral hearings held between 19 and 20 May 2014, [ICC-CPI-20140501-MA158](#); *Ngudjolo*, oral hearing held on 21 October 2014, [ICC-01/04-02/12-199](#), p. 3; *Bemba*, oral hearings held between 9 and 12 January 2018, [ICC-PIDS-CIS-CAR-01-020/18_Eng](#); *Gbagbo and Blé Goudé*, oral hearings held between 22 and 24 June 2020, [ICC-CPI-20200619-MA253](#); *Ntaganda*, oral hearings held between 12 and 14 October 2020, [ICC-CPI-20210311-MA263](#); *Ongwen*, oral hearings held between 14 and 18 February 2022, [ICC-PIDS-CIS-UGA-02-024/24_Eng](#).

²⁵ E.g. *Ngudjolo*, Order in relation to the conduct of the hearing before the Appeals Chamber, 8 October 2014, [ICC-01/04-02/12-210 A](#), paras (1)-(2).

FOR THE FOREGOING REASONS, THE DEFENCE PRAYS THE APPEALS CHAMBER:

- **TO GRANT** leave to reply on Grounds of Appeal 1-7, 12, 19, 21-22, 24-26, 29-38, 40-57 and 77-78 in Appeal A, with respect to the specific issues identified above;
- **TO DISMISS *IN LIMINE*** the Prosecution's submissions in response to Grounds of Appeal 9 and 11 in Appeal A **OR, IN THE ALTERNATIVE, TO GRANT** leave to reply thereto;
- **TO DISMISS *IN LIMINE*** the Prosecution's submissions in response to Grounds of Appeal 13 and 16-17 in Appeal A; **OR, IN THE ALTERNATIVE, TO ORDER**, pursuant to Regulation 23*bis*(3) of the RoC, the reclassification as "Confidential" of documents mentioned at paragraphs 138 and 160 of the Prosecution's Response and paragraphs 97-105 and 113-119 of the Defence Appeal Brief A, **TO GRANT** the Prosecution with a limited extension of time limit to respond to Defence's Grounds of Appeal 13 and 16-17, with the possibility for the Defence to seek leave to reply thereto thereafter; **AND**
- **TO CONSIDER THE OTHER DEFENCE'S SUBMISSIONS** at paragraphs 22-24 above with respect to the opportunity of a hearing.



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

Dated this 27 May 2026,

At The Hague, The Netherlands.