Cour
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International
Criminal
Court

Original: English

No. **ICC-02/05-01/20**
Date: **30 October 2026**

TRIAL CHAMBER I

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

SITUATION IN DARFUR, SUDAN

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

Public redacted version of the

Decision on the presentation of additional evidence relevant to the sentence

Decision 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** Common Legal Representative of 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 Osvaldo Zavala Giler	☐ **Counsel Support Section**
☒ **Victims and Witnesses Unit**	☒ **Detention Section**
☐ **Victims Participation and Reparations Section**	☐ **Other**

I. PROCEDURAL HISTORY

1. On 6 October 2025, Trial Chamber I ('the Chamber') delivered its judgment pursuant to Article 74 of the Rome Statute ('the Statute'), convicting Abd-Al-Rahman of 27 counts of crimes against humanity and war crimes (the 'Trial Judgment').[1]

2. On the same day, the Chamber issued its Decision on the sentencing procedure instructing, *inter alia*, the parties and participants to file any request to present additional evidence relevant to the sentence by 20 October 2025.[2]

3. On 20 October 2025, the Prosecution[3] and the Defence[4] filed their requests to submit additional evidence for sentencing. The Common Legal Representatives of Victims ('the CLRV') indicated that she does not intend to use additional evidence during the sentencing hearing.[5]

4. On 21 October 2025, the Defence filed an accompanying request to submit prior recorded testimony of witnesses pursuant to Rules 68(2)(b) and 68(3) of the Rules of Procedure and Evidence ('the Rules') for sentencing.[6]

[1] Trial Judgment, ICC-02/05-01/20-1240.
[2] Decision on the sentencing procedure, ICC-02/05-01/20-1241.
[3] Prosecution's Request to submit additional evidence for sentencing, ICC-02/05-01/20-1242 (the 'Prosecution's Request').
[4] Defence Request to Present Additional Evidence for Sentencing, ICC-02/05-01/20-1243-Conf-Exp (the 'Defence's Evidence Request'), with corresponding annexes 1-8 (ICC-02/05-01/20-1243-Conf-Exp-Anx1 to Anx8). Pursuant to the Chamber's authorisation on 22 October 2025, they were reclassified as confidential (ICC-02/05-01/20-1243-Conf; ICC-02/05-01/20-1243-Conf-Anx1 to Anx8). The Chamber notes that on 21 October 2025, the Defence disclosed one item DAR-D31-00000376 (email from the Defence, at 16:55) and again on 30 October 2025, the Defence disclosed the final report of expert [REDACTED], DAR-D31-00000378 (email from the Defence, at 14:11).
[5] Email from CLRV of 20 October 2025, at 16:14.
[6] Defence Request to submit prior recorded testimony of witnesses pursuant to Rule 68(2)(b) and Rule 68(3) for sentencing, ICC-02/05-01/20-1244-Conf-Exp (the 'Defence's Rule 68 Request'), with its corresponding annex. Pursuant to the Chamber's authorisation on 22 October 2025, they were reclassified as confidential (ICC-02/05-01/20-1244-Conf; ICC-02/05-01/20-1244-Conf-Anx1). Public and confidential redacted versions were also notified (ICC-02/05-01/20-1244-Red; ICC-02/05-01/20-1244-Conf-Anx1-Red).

5. On 27 October 2025, the Prosecution[7] and the CLRV[8] filed their responses to both Defence requests (the 'Prosecution's Response' and 'CLRV's Response', respectively).

6. On that same day, in accordance with the Chamber's instructions,[9] the Registry filed its observations on this matter, including an annex with a report on the conduct of Abd-Al-Rahman while in detention (the 'Registry Report').[10]

7. On 29 October 2025, as instructed by the Chamber,[11] the Defence filed its reply to two issues arising from the Prosecution's and CLRV's responses.[12]

8. On 30 October 2025, the Chamber informed the parties by way of email of its decision on the current requests with reasons to follow.[13]

9. The Chamber hereby provides the reasons for its aforesaid email decision.

II. SUBMISSIONS AND ANALYSIS

A. General framework

10. The Chamber hereby provides the reasons for its email decision of 30 October 2025, authorising the submission of evidence for the purpose of sentencing.

11. The Chamber recalls that in its Decision on the sentencing procedure, it established the conditions under which the parties or participants should file their request to present additional

[7] Prosecution's Response to Defence requests for the submission of additional evidence and submission of testimony of witnesses pursuant to rule 68(2)(b) and rule 68(3) for sentencing ('the Prosecution's Response'), ICC-02/05-01/20-1248-Conf.
[8] CLRV Response to the "Confidential Redacted Version of the Defence Request to Present Additional Evidence for Sentencing (ICC-02/05-01/20-1243-Conf)" ('the CLRV's Response'), ICC-02/05-01/20-1249-Conf.
[9] E-mails from the Chamber of 21 October 2025, at 12:06 and 23 October 2025, at 13:16.
[10] Registry's Observations on "Defence Request to Present Additional Evidence for Sentencing, 20 October 2025, ICC-02/05-01/20-1243-Conf", ICC-02/05-01/20-1247-Conf, with Conf-Anx.
[11] Email from the Chamber of 28 October 2025, at 11:38.
[12] Defence's "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" ('the Defence's Reply'), ICC-02/05-01/20-1251-Conf.
[13] Email from the Chamber of 30 October 2025, at 11:16.

evidence.[14] The Chamber incorporates by reference the general framework applicable and its previous findings on the introduction of prior recorded statements pursuant to Rule 68(2)(b) and Rule 68(3) of the Rules, and of evidence other than through a witness.[15]

B. Testimonial and expert evidence

12. The Defence requests the introduction pursuant to Rule 68(3) of the Rules of a new statement and associated material of witness D-0016, who testified during trial. [16] The Defence also seeks the submission pursuant to Rule 68(2)(b) of the Rules of: (i) the statements and associated material of two new witnesses, D-0040 and D-0041;[17] and (ii) the [REDACTED] report of [REDACTED] on Abd-Al-Rahman (the 'Expert Report'), as well as his *curriculum vitae*.[18]

13. The Defence generally states that the statements sought for submission are probative, bear sufficient indicia of reliability, and are not repetitive of evidence already on the record.[19]

i. D-0016

14. The Defence submits that D-0016's new statement provides relevant evidence on the applicable sentencing practice in Sudan, which constitutes one of the various relevant factors that the Chamber should weigh in the balance in its determination of Abd-Al-Rahman's sentence.[20]

[14] Decision on the sentencing procedure, ICC-02/05-01/20-1241, paras 4-5.
[15] First Decision on the Prosecution's requests to introduce prior recorded testimonies under Rule 68(2)(b), 2 March 2022, ICC-02/05-01/20-612-Conf; First Decision on the Prosecution's request to introduce prior recorded testimonies under Rule 68(3), 20 January 2022, ICC-02/05-01/20-559-Conf; Trial Judgment, ICC-02/05-01/20-1240, Section 4.IV.A.Documentary evidence.
[16] D-0016's Statement, DAR-D31-00000363; D-0016's Associated Materials, DAR-D31-00000364; DAR-D31-00000365; DAR-D31-00000366; DAR-D31-00000367. *See also* Defence's Evidence Request, paras 12-15; Defence's Rule 68 Request, paras 22-26. *See further* D-0016: T-130; T-131; T-132; T-133.
[17] D-0040's Statement, DAR-D31-00000357, Translation, DAR-D31-00000358; D-0040's ID, DAR-D31-00000359; D-0041's Statement, DAR-D31-00000360, Translation, DAR-D31-00000361; D-0041's ID, DAR-D31-00000362. *See also* Defence's Evidence Request, paras 16-18; Defence's Rule 68 Request, paras 8-14.
[18] Defence's Evidence Request, paras 20-24; Defence's Rule 68 Request, paras 18-20. *See also* Annexes 5 and 6 to Defence's Evidence Request (*i.e.* Expert Report, DAR-D31-00000378; Expert's CV, DAR-D31-00000377).
[19] Defence's Rule 68 Request, para. 1.
[20] Defence's Evidence Request, para. 13; Defence's Rule 68 Request, para. 23.

15. The Chamber recalls its findings that D-0016's education, background and language skills, among other 'provides a strong basis for this witness' knowledge' on legal issues related to the Sudanese legal system and that he is both credible and reliable in this regard.[21]

16. The Chamber notes the Prosecution's objection to the introduction of D-0016's evidence, arguing that the Defence has not demonstrated good cause to recall this witness for the sentencing proceedings.[22] However, the Chamber notes that D-0016's new statement focuses on his legal interpretation of sentencing in Sudanese law, on the basis of the Chamber's findings in the Trial Judgment comparing crimes under the Statute with equivalent acts in the Sudanese legal system.[23]

17. However, the Chamber accepts the CLRV's submissions (while deferring to the Chamber's discretion the admission of D-0016's evidence), that the Court is not bound by domestic sentencing practices and laws.[24] Accordingly, while the Chamber authorises the submission of D-0016's new statement, it recalls that its reliance thereon for the purposes of sentencing may be limited given the clear provisions in the Court's statutory framework.

ii. D-0040 and D-0041

18. The Defence submits that D-0040 and D-0041 provide relevant evidence on [REDACTED].[25]

19. The Chamber notes that, while the Prosecution opposes the submission of these witnesses statements under Rule 68(2)(b) of the Rules, it does not oppose their submission under Rule 68(3) of the Rules. [26]

20. The Chamber further notes the Prosecution's objection, namely that these witnesses' statements contain evidence going to issues that are materially in dispute and that they are not of a cumulative or corroborative of the evidence on the record.[27] Although these are factors to be taken into consideration, particularly when deciding on whether to rely on these statements

[21] Trial Judgment, ICC-02/05-01/20-1240, Annex B, para. 636.
[22] Prosecution's Response, paras 16-25.
[23] Trial Judgment, ICC-02/05-01/20-1240, Section 2.Jurisdiction.
[24] CLRV's Response, paras 11-13.
[25] Defence's Evidence Request, paras 16-17; Defence's Rule 68 Request, para. 9.
[26] Prosecution's Response, paras 3, 9-15, 33.
[27] Prosecution's Response, paras 3, 9-15, 33.

and the weight to be given for the purposes of the sentencing judgment pursuant to Article 76 of the Statute, they do not impede their introduction at this stage.

21. The Chamber also accepts the CLRV's submission that the relevance of these statements is not evident.[28] The Chamber considers that the prior recorded testimonies of D-0040 and D-0041 are not relevant to determining the gravity of the crimes of which Abd-Al-Rahman has been convicted. However, they may have some relevance for the assessment of remorse and/or good behaviour after the period of the charges, which could eventually be considered for the determination of the sentence.[29]

22. The Chamber notes that the statements are signed by the witnesses and the interpreter who assisted them during the interview, and that the witnesses confirmed that their testimony was provided voluntarily. The Chamber further notes the Defence's submission on the difficulties in obtaining accompanying Rule 68(2) declarations for these witnesses, and [REDACTED].[30]

23. Although the Chamber acknowledges it would have been preferable to hear these witnesses pursuant to Rule 68(3) of the Rules, so they could be subject to cross-examination as well as questioning by the Chamber, it is clear that their appearance on the week of 17-21 November 2025 is unattainable.[31]

24. In light of the above, and considering that the requirements under Rule 68(2)(b)(i) of the Rules are met, the Chamber authorises the submission of the evidence of D-0040 and D-0041 pursuant to this provision.

25. However, in its evaluation of this witnesses' evidence, the Chamber will take into account that this is not a case where the evidence is uncontroversial, the witnesses will not appear before the Chamber, will not be subject to cross examination, and therefore their

[28] CLRV's Response, paras 7-10.
[29] *See for example* Trial Chamber II, *The Prosecutor v. Germain Katanga*, Decision on Sentence pursuant to article 76 of the Statute, 23 May 2014, ICC-01/04-01/07-3484-tENG, paras 32, 91, 117; Trial Chamber VIII, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Judgment and Sentence, 27 September 2016, ICC-01/12-01/15-171, paras 103, 105; Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Sentencing Judgment, 7 November 2019, ICC-01/04-02/06-2442, para. 236; Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Sentencing Judgment, 20 November 2024, ICC-01/12-01/18-2662, para. 96.
[30] Defence's Evidence Request, paras 17-18; Defence's Rule 68 Request, paras 11-14.
[31] Defence's Reply, paras 3-6.

evidence has limited probative value and will be assessed by the Chamber in light of other evidence given during the trial.[32]

iii. Expert Report

26. The Chamber notes that an interim and a full report of Abd-Al-Rahman by a medical expert (the 'Expert' and the 'Expert Report') were submitted by the Defence on 20 and 29 October 2025 respectively.[33] Considering that the full report contains the final conclusions by the Expert of his assessment of Abd-Al-Rahman, the Chamber will only rule on the submission of the full report as the interim report has now become moot.

27. The Chamber notes that the Expert Report contains information that may be relevant for sentencing purposes, including considerations about Abd-Al-Rahman's [REDACTED].

28. The Chamber therefore authorises the formal submission of the Expert Report. However, since the full report was only disclosed to the Prosecution and the CLRV on 30 October 2025, the Chamber deems it appropriate to give the Prosecution and the CLRV the opportunity to respond to the Expert Report in their sentencing briefs. Accordingly, the Chamber will take any eventual submissions on the Expert Report in its decision on the sentence pursuant to Article 76 of the Statute.

C. Non-testimonial evidence

i. Prosecution items

29. The Prosecution seeks to submit four items of non-testimonial evidence, comprising of three photographs depicting one *sheikh* and two *umdah*s who were killed during the Deleig operation,[34] and a supporting investigation report related to these photographs.[35]

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[32] Trial Judgment, ICC-02/05-01/20-1240, Section 4.III.Witness evidence, para. 192.
[33] The interim report was submitted through the Defence's Evidence Request filed on 20 October 2025 (*see* Annex 5 to Defence's Evidence Request). As noted above, the full report was transmitted by email on 29 October 2025 and disclosed on 30 October 2025 under the ERN DAR-D31-00000378 (*see* Email of 29 October 2025, at 20:34).
[34] Prosecution's Request, para. 2, *referring to* Photographs, DAR-OTP-0222-5202 (*Sheikh* Ismail Abdulaziz, known as Dikobi); DAR-OTP-0222-5203 (*Umdah* Mohamed Suleiman Abdulshafa, known as Dirbo); DAR-OTP-0222-5205 (*Umdah* Adam Adam Degges Ahmed Abdulshafa, known as Kindiri); Trial Judgment, ICC-02/05-01/20-1240, Sections 5.III.C., 7.II.K., 7.II.L., paras 581, 641-646, 922, 928.
[35] Prosecution's Request, para. 2, *referring to* Investigation Report, DAR-OTP-0220-4200-R01.

30. The Prosecution intends to use these images as visual aids during the upcoming hearing and argues that, as these items are relevant to humanising the victims, they are also relevant factors to determining the sentence.[36]

31. The Chamber notes that neither the Defence nor the CLRV oppose the Prosecution's request.[37]

32. The Chamber further notes that these four items were already disclosed on 8 June 2022. In fact, one of the items was used through witness P-0955, and a copy of this item is already on the record.[38]

33. Accordingly, the Chamber authorises the formal submission of these four items.

ii. Defence items

34. The Defence seeks the introduction of seven additional items of non-testimonial evidence: (i) a list of [REDACTED];[39] (ii) a [REDACTED];[40] (iii) the Registry Report;[41] and (iv) four articles, three related to the role of a pharmacist in a region subject to a lack of access to medical care, such as Rahad Al-Berdi, [42] and one on the sentencing and placement of offenders [REDACTED].[43]

35. Regarding the items on Abd-Al-Rahman's [REDACTED], the Chamber notes that neither the Prosecution nor the CLRV oppose their submission.[44] Accordingly, the Chamber authorises their formal submission.

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[36] Prosecution's Request, para. 3.
[37] Prosecution's Request, para. 4, *referring to* Emails from the Defence on 20 October 2025, at 13:12, and from the LRV on 20 October 2025, at 15:21.
[38] Prosecution's Request, para. 2, *referring to* Photograph, DAR-OTP-0222-5205, previously submitted under DAR-OTP-0225-0051.
[39] List, DAR-D31-00000369. *See also* Defence's Evidence Request, para. 28.
[40] Schedule, DAR-D31-00000368. *See also* Defence's Evidence Request, para. 27.
[41] Defence's Evidence Request, paras 30-31.
[42] Articles, DAR-D31-00000370; DAR-D31-00000371; DAR-D31-00000372. *See also* Defence's Evidence Request, para. 29.
[43] Article, DAR-D31-00000376.
[44] Prosecution's Response, para. 31; CLRV's Response, para. 2.

36. Regarding the Registry Report, the Chamber recalls that, in accordance with its instructions, the Registry submitted the report as an annex to its observations. As such, and in answer to the Defence's request for guidance in this regard,[45] the Registry Report is now part of the record of the case. Its formal submission is not necessary.

37. The Chamber notes, nonetheless, that the Prosecution reserved its position on the Registry Report, while its submission and disclosure was pending.[46] Noting that the Registry Report was only disclosed to the Prosecution and the CLRV on 31 October 2025, they may make observations in this regard in their Sentencing Briefs as well as during the upcoming sentencing hearing.

38. Regarding the three articles on the role of pharmacists in various communities, the Chamber notes that neither the Prosecution nor the CLRV oppose their submission.[47] The Chamber therefore authorises their formal submission.

39. Regarding the article on the sentencing of offenders [REDACTED], the Chamber notes that the Prosecution opposes its submission considering that 'no explanation is provided by the Defence of its supposed relevance of this item which relates to sentencing practices in a jurisdiction with no discernible link to Mr Abd-Al-Rahman', and that it is not supported by any other evidence.[48] The Chamber considers that Defence has failed to provide sufficient reasoning as to how this article could be relevant to the present sentencing proceedings. Accordingly, the Chamber rejects its submission.

III. DISPOSITION

40. For the above reasons, the Chamber:

[45] Email of 28 October 2025, at 12:30.
[46] Prosecution's Response, para. 31.
[47] Prosecution's Response, para. 31; CLRV's Response, para. 2.
[48] Prosecution's Response, para. 32.

i. authorises the submission of the following items by the Prosecution: DAR-OTP-0222-5202, DAR-OTP-0222-5203, DAR-OTP-0222-5205; DAR-OTP-0220-4200-R01;

ii. authorises the submission of the statements and associated materials of witnesses D-0040 and D-0041 under Rule 68(2)(b), and D-0016 under Rule 68(3) by the Defence;

iii. authorises the submission of the Expert Report and the Expert's *curriculum vitae*;

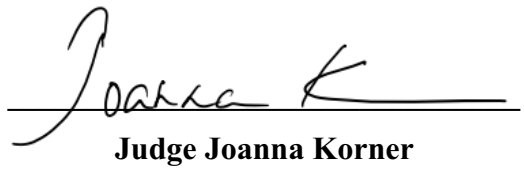
iv. authorises the submission of the following items by the Defence: DAR-D31-00000369, DAR-D31-00000368, DAR-D31-00000370, DAR-D31-00000371 and DAR-D31-00000372;

v. rejects the submission of item DAR-D31-00000376;

vi. directs the Registry to reflect the formal submission of the aforesaid items in the eCourt metadata; and

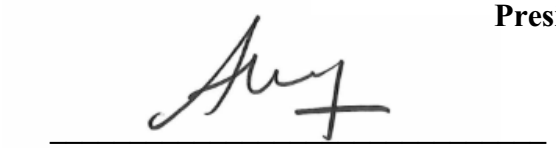
vii. directs the parties, participants and the Registry to file public redacted versions of all filings referred to above, (including the annex containing the Registry Report), and those that are still pending no later than 12 November 2025.

viii. directs the Defence to file a public redacted version of the Expert Report no later than 12 November 2025.

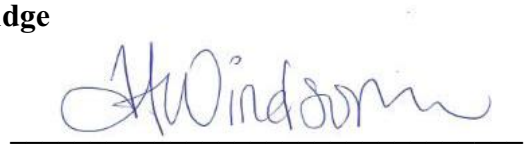


Judge Joanna Korner

Presiding Judge



Judge Reine Alapini-Gansou



Judge Althea Violet Alexis-Windsor

Dated this 30 October 2026

At The Hague, The Netherlands