

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: *English*

No.: *ICC-02/05-01/20*
Date: **11 November 2025**

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
With Confidential Annexes 1-8**

**Public Redacted Version of the Defence Request to Present Additional Evidence for
Sentencing**

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

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I. INTRODUCTION

1. Pursuant to Articles 76(1) and 78(1) of the Rome Statute (“Statute”), Rules 68(2) and 145 of the Rules and Procedure and Evidence (“Rules”), and Trial Chamber I’s Decision on the sentencing procedure dated 6 October 2025 (“Decision”),¹ the Defence for Mr Ali Muhammad Ali Abd-Al-Rahman (“Defence”) makes this request to present additional evidence during the forthcoming sentencing proceedings. Specifically, the Defence seeks the introduction of a small number of additional witness statements, one of which is from D-16, who already testified during the trial, and a number of additional documents of a non-testimonial nature (collectively, “Additional Evidence”). The Additional Evidence is itemised in a schedule at Annex A.

2. All the Additional Evidence is relevant to the consideration of factors to be taken into account in determining Mr Abd-Al-Rahman’s sentence. The Additional Evidence is probative, bears sufficient indicia of reliability, and is not repetitive of evidence already on the record.

3. In compliance with the procedure set out in the Decision, the Defence concurrently files a separate request seeking the admission of written statements from new defence witnesses pursuant to Rule 68(2)(b), as well as a new statement from trial witness D-0016, pursuant to Rule 68(3).

4. In addition, the Defence requests that the Trial Chamber instruct the Registry to file a report on Mr Abd-Al-Rahman’s conduct while in detention, and to take the contents of the report into consideration.

II. CLASSIFICATION

5. This Request and its Annex A are classified as confidential *ex parte*, Trial Chamber I only. A confidential redacted version for the attention of the Prosecution and Legal Representative of Victims (“LRV”) is filed simultaneously. [REDACTED]

6. [REDACTED].

¹ [ICC-02/05-01/20-1241](#).

7. A public redacted version of this request will be filed shortly.

III. PROCEDURAL BACKGROUND

8. On 6 October 2025, the Trial Chamber delivered its Judgement under Article 74 and declared Mr Abd-Al-Rahman guilty of 27 counts of war crimes and crimes against humanity.² On the same day, the Chamber issued its Decision on the sentencing procedure, directing the parties and participants to file any request to present additional evidence by 20 October 2025.³

9. In conformity with the directions, the Defence annexes a copy of new statements it seeks to have submitted, and in respect to non-testimonial evidence, hyperlinks to the disclosed material, with submissions on each item's relevance and probative value.⁴

SUBMISSIONS

10. Jurisprudence from this Court supports the proposition that additional evidence for sentencing purposes can be submitted when the evidence is unique, goes beyond other evidence on the record, and is *prima facie* relevant.⁵ In order to take into account the individual circumstances of the convicted person, the relevance assessment for sentencing must be broader than for a conviction Judgement. This indicates that all information relevant to the individual's life and character may be considered.⁶

11. None of the items of evidence sought for submission into evidence go to Mr Abd-Al-Rahman's acts and conduct within the meaning of 68(2)(b) of the Rules. The Defence seeks the introduction of evidence that falls broadly into three categories providing the

² [ICC-02/05-01/20-1240](#).

³ [ICC-02/05-01/20-1241](#), para. 4.

⁴ [ICC-02/05-01/20-1241](#), para. 4(c).

⁵ *Ntaganda*, Decision on requests for admission of evidence related to sentencing from the bar table, [ICC-01/04-02/06-2402](#), para. 15;

⁶ ICTY, *Prosecutor v. Mucić et al.*, IT-96-21-A, Judgment, 20 February 2001, para. 787, "Therefore there is a relevant distinction in the role of a fact-finder at trial and a sentencing judge, who is not restrained by the same rules. Rather, it is essential that the sentencing judge is in 'possession of the fullest information possible concerning the defendant's life and characteristics'" (referring to *Williams v. New York*, 337 U.S. 241 (1949), p. 247)

Chamber with the most up-to-date information about Mr Abd-Al-Rahman's individual circumstances relating to his (i) health; (ii) character; and (iii) relationship with and support of his family since his arrival in The Netherlands. The Defence submits that this is evidence of mitigation that should be taken into consideration in the determination of his sentence under Article 78 of the Statute and Rule 145 of the Rules.

(a) Proposed viva voce witness to be introduced pursuant to Rule 68(3)

12. The Defence seeks to introduce the prior recorded testimony of Witness D-0016 (document DAR-D31-00000363, dated 18 October 2025).

13. Witness D-0016's new statement was sought by the Defence in order to assist the Chamber in its assessment of the applicable sentencing practice in Sudan, which constitutes one of the various relevant factors that the Chamber may weigh in the balance in its determination of Mr Abd-Al-Rahman's sentence pursuant to Rule 145(1)(b) of the Rules. At paragraph 34, footnotes 45 and 46, and paragraph 44, footnote 74, of its Article 74 Judgment, the Chamber specifically refers to various provisions of Sudanese law defining offences that are comparable to the crimes for which Mr. Abd-Al-Rahman has been found guilty. Witness D-0016's evidence as to Sudan's sentencing practice for these offences is thus manifestly relevant to the Chamber's determination on sentence.

14. The Defence respectfully proposes that D-0016's statement stand as his evidence-in-chief, and expects that no more than 30 minutes would be required for it to ask any supplementary questions. The Prosecution and LRV will no doubt state how long they would need to cross-examine.

15. [REDACTED]

(b) Proposed witnesses to be introduced pursuant to Rule 68(2)(b)

16. The Defence seeks to introduce the prior recorded testimony of two additional witnesses, D-0040, [REDACTED] and D-0041 [REDACTED], plus their respective translations and the witnesses' identity documents. Only the Arabic versions are signed. These witnesses both provide relevant evidence of Mr Abd-Al-Rahman's conduct [REDACTED] in terms of his role in inter-tribal conflict resolution from 2009 through

local committees. Mr Abd-Al-Rahman's actions contributed to the well-being of the communities [REDACTED].

17. The practice of the Trial Chamber during trial was to exercise a degree of flexibility in obtaining accompanying Rule 68(2)(b) declarations for defence witnesses [REDACTED]. The Defence would submit that the same flexibility should apply during sentencing proceedings and find that declarations will not be required, particularly since neither D-0040 nor D-0041's prior recorded testimony go to the acts and conduct of Mr Abd-Al-Rahman in relation to the charges.

18. The Defence respectfully requests protective measures for D-0040 and D-0041. [REDACTED] In accordance with Articles 64 and 68 of the Statute, and Rules 87 and 88 of the Rules, the Trial Chamber is respectfully requested to grant the following the use of a Pseudonym as a protective measure for these two 68 (2)(b) witnesses.

19. [REDACTED]

20. [REDACTED]

21. [REDACTED]

22. [REDACTED]

23. [REDACTED]

24. [REDACTED]

25. [REDACTED]

26. [REDACTED]

(a) Non-testimonial evidence

27. [REDACTED]⁷

28. [REDACTED].

29. Documents DAR-D31-00000370, DAR-D31-00000371 and DAR-D31-00000372 demonstrate the importance of the role of a pharmacist in a region subject to a lack of access to medical care such as Raad-Al-Berdi. It is submitted that the community as a whole would benefit from Mr Abd-Al-Rahman return to Raad-Al-Berdi as soon as

⁷ *Katanga*, Decision on sentence pursuant to article 76 of the Statute, [ICC-01/04-01/07-3484](#), paras. 85 and 88.

possible. This element should be considered as a relevant factor to be considered in the determination of his sentence.

30. Finally, the Defence wishes the Trial Chamber to have sight of and take into account a report from the Detention Centre showing Mr Abd Al-Rahman's exemplary good behavior since his arrival in The Netherlands. This is a relevant factor for the determination of sentence and has been considered as such in the *Kilolo* case.⁸ In *Al Mahdi*, the Trial Chamber attributed some weight to Mr Al Mahdi's irreproachable behaviour in detention.⁹

31. The Acting Chief Custody Officer has denied a Defence commission of such a report, suggesting that it can be providing on request from the Trial Chamber (Annex 7). Accordingly, the Defence respectfully requests that such an order be made.

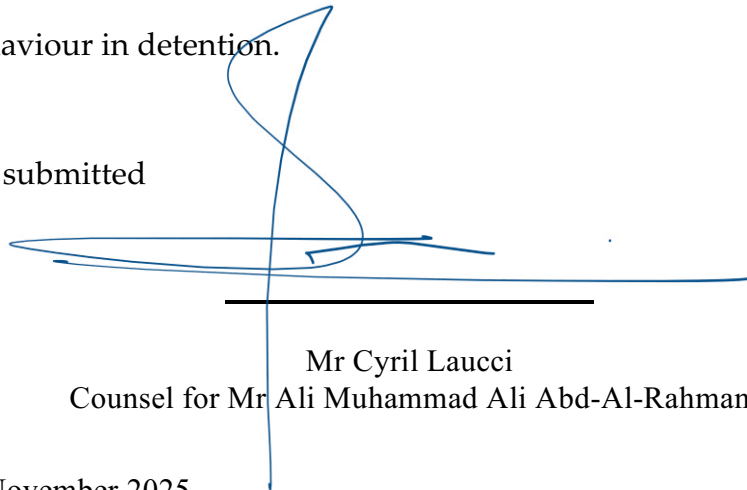
⁸ *Kilolo*, Decision on Sentence pursuant to Article 76 of the Statute, 22 March 2017, [ICC-01/05-01/13-2123](#), para. 88.

⁹ *Al Mahdi*, Judgment and Sentence, 27 September 2016, [ICC-01/12-01/15](#), para. 97.

RELIEF SOUGHT

32. In light of the above, the Defence respectfully requests the Trial Chamber I:
- (i) to grant the introduction of the Additional Material for the purpose of the sentencing proceedings;
 - (ii) to grant requested protective measures for new Defence witnesses D-0040 and D-0041;
 - (iii) [REDACTED];
 - (iv) [REDACTED]; and
 - (v) to instruct the Detention Unit to provide a report on Mr. Abd-Al-Rahman's behaviour in detention.

Respectfully submitted



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

Dated this 11 November 2025
At The Hague, The Netherlands