



Original: English

No. ICC-02/05-01/20 A

Date: 21 January 2026

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 document

**Decision on the “Defence Application under Regulation 37(2) of the Regulations
of the Court”**

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

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

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Ali Muhammad Ali Abd-Al-Rahman against the decision of Trial Chamber I entitled “Trial Judgment” of 6 October 2025 (ICC-02/05-01/20-1240),

Having before it the “Defence Application under Regulation 37(2) of the Regulations of the Court” of 13 January 2026 (ICC-02/05-01/20-1293),

Having before it the “Defence Application under Regulation 24(5) of the Regulations of the Court” of 14 January 2026 (ICC-02/05-01/20-1295),

Renders, pursuant to regulations 24(5), 37(2), 58(3) and 59(2) of the Regulations of the Court, the following

DECISION

1. The “Defence Application under Regulation 24(5) of the Regulations of the Court” is rejected.
2. The “Defence Application under Regulation 37(2) of the Regulations of the Court” is granted in part. The page limit for Mr Abd-Al-Rahman’s appeal brief is extended by 80 pages.
3. The page limit for the Prosecutor’s response to the appeal brief is extended by 80 pages.

REASONS

I. PROCEDURAL HISTORY

1. On 6 October 2025, Trial Chamber I (hereinafter: “Trial Chamber”) issued the “Trial Judgment” (hereinafter: “Trial Judgment”).¹

¹ [ICC-02/05-01/20-1240](#), with public Annexes A ([ICC-02/05-01/20-1240-AnxA](#)), C ([ICC-02/05-01/20-1240-AnxC](#)) and D ([ICC-02/05-01/20-1240-AnxD](#)), and confidential [Annex B](#) (a public redacted version was registered on the same day, ICC-02/05-01/20-1240-AnxB-Red).

2. On 6 November 2025, the Defence for Mr Ali Muhammad Ali Abd-Al-Rahman (hereinafter: “Defence”) submitted its notice of appeal against the Trial Judgment (hereinafter: “Notice of Appeal”).²

3. On 9 December 2025, the Trial Chamber issued the “Sentencing Judgment”.³

4. On 15 December 2025, following a request by the Defence,⁴ the Appeals Chamber extended the time limit for the filing of the appeal brief against the Trial Judgment to 30 January 2026.⁵

5. On 22 December 2025, the Appeals Chamber rejected a request by the Defence seeking a further extension of the time limit for the filing of its appeal brief against the Trial Judgment.⁶

6. On 13 January 2026, the Defence filed a request seeking the extension of the page limit for its appeal brief against the Trial Judgment (hereinafter: “Request”).⁷

7. On 14 January 2026, the Deputy Prosecutor (hereinafter: “Prosecutor”) filed her response to the Request (hereinafter: “Prosecutor’s Response”).⁸

8. On the same day, the Defence submitted a request for leave to reply to the Prosecutor’s Response (hereinafter: “Request for Leave to Reply”).⁹

² [Defence Notice of Appeal Pursuant to Article 81\(1\)\(b\) of the Rome Statute](#), ICC-02/05-01/20-1261.

³ ICC-02/05-01/20-1281-Conf (a public redacted version was registered on the same day, [ICC-02/05-01/20-1281-Red](#)), with confidential [Annex](#), ICC-02/05-01/20-1281-Conf-Anx (a public redacted version was registered on the same day, ICC-02/05-01/20-1281-Anx-Red).

⁴ [Application for Extension of Time to File the Defence Appeal Brief](#), ICC-02/05-01/20-1279.

⁵ [Decision on the “Application for Extension of Time to File the Defence Appeal Brief”](#), ICC-02/05-01/20-1285 (A), p. 3, para. 14.

⁶ [Decision on the “Application for Further Extension of Time Limit to submit the Defence Appeal Brief pursuant to Regulation 35\(2\) of the Regulations of the Court”](#), ICC-02/05-01/20-1288. *See also Application for Further Extension of Time Limit to submit the Defence Appeal Brief pursuant to Regulation 35(2) of the Regulations of the Court*, 16 December 2025, ICC-02/05-01/20-1286; [Prosecution Response to “Application for Further Extension of Time to Submit the Defence Appeal Brief pursuant to Regulation 35\(2\) of the Regulations of the Court”](#), 17 December 2025, ICC-02/05-01/20-1287.

⁷ [Defence Application under Regulation 37\(2\) of the Regulations of the Court](#), ICC-02/05-01/20-1293.

⁸ [Prosecution Response to “Defence Application under Regulation 37\(2\) of the Regulations of the Court”](#), ICC-02/05-01/20-1294.

⁹ [Defence Application under Regulation 24\(5\) of the Regulations of the Court](#), ICC-02/05-01/20-1295 (notified on 15 January 2026).

II. MERITS

A. Preliminary matter: Request for Leave to Reply

9. As a preliminary matter, the Appeals Chamber notes the Request for Leave to Reply, in which the Defence seeks leave to reply to the Prosecutor's Response, pursuant to regulation 24(5) of the Regulations of the Court (hereinafter: "Regulations"), on the basis that it could not have anticipated such a response.¹⁰

10. Regulation 24(5) of the Regulations provides:

Participants may only reply to a response with the leave of the Chamber, unless otherwise provided in these Regulations. Unless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated.

11. The Appeals Chamber may grant a request for leave to reply if the above mentioned conditions are met, or if it considers that a reply would otherwise be necessary for the adjudication of the appeal.¹¹

12. In the present case, the Defence seeks to reply to the Prosecutor's submission (i) that the number of pages for an appeal brief "cannot *ipso facto* result from the number of grounds of appeal, and the alternative factors that the Prosecution invites the Appeals Chamber to consider"; and (ii) on the pre-determination of a ground of appeal.¹² The Appeals Chamber is not persuaded that these issues are new or could not have been reasonably anticipated, since the Defence effectively discussed these matters in the Request. In any event, further submissions on these issues would not assist the Appeals Chamber in its determination of the Request.

13. Accordingly, the Request for Leave to Reply is rejected.

¹⁰ [Request for Leave to Reply](#), paras 2-3.

¹¹ See *The Prosecutor v. Joseph Kony*, [Decision on the Defence's request for leave to reply](#), 26 March 2025, ICC-02/04-01/05-578 (OA4), para. 12; *Situation in the Republic of the Philippines*, [Decision on the Republic of the Philippines' request for leave to reply to the "Prosecution's response to the Philippine Government's Appeal Brief against 'Authorisation pursuant to article 18\(2\) of the Statute to resume the investigation' \(ICC-01/21-65 OA\)](#), 2 May 2023, ICC-01/21-72 (OA), paras 9-10; *Situation in the Islamic Republic of Afghanistan*, [Decision on the Prosecutor's request for leave to reply](#), 23 December 2022, ICC-02/17-206 (OA5), para. 8; *The Prosecutor v. Bosco Ntaganda*, [Decision on Mr Ntaganda's request for leave to reply](#), 17 July 2017, ICC-01/04-02/06-1994 (OA6), para. 9; *The Prosecutor v. Bosco Ntaganda*, [Decision on Mr Ntaganda's request for leave to reply](#), 3 March 2017, ICC-01/04-02/06-1813 (OA5), para. 8.

¹² [Request for Leave to Reply](#), paras 3-4.

B. Summary of the submissions

14. The Defence requests, pursuant to regulation 37(2) of the Regulations, that the Appeals Chamber extend the page limit for its appeal brief from 100 to 250 pages on the basis that exceptional circumstances have been established in the present case.¹³

The Defence submits that the extension of the page limit is warranted due to “the large number of grounds of appeal” it intends to raise,¹⁴ and the complexity and novelty of the issues addressed in the present appeal.¹⁵

15. The Defence refers to another case in which the defence team had identified 90 grounds of appeal in its notice of appeal and the Appeals Chamber granted a similar extension to 250 pages for the appeal brief.¹⁶ The Defence is of the view that this is comparable to the “79 provisional grounds of appeal” it has identified in its Notice of Appeal, and submits that there is good cause for a similar extension.¹⁷ The Defence also makes reference to other instances where the Appeals Chamber denied requests for extension of the page limit for the appeal brief, submitting that in these instances the number of grounds of appeal listed in the relevant notices of appeal was significantly lower.¹⁸ The Defence further argues that the requested extension of the page limit is “extremely conservative” because “[a]ny lower limit would simply compel the Defence to give up some of the grounds of appeal it has identified”, and that “a lower page limit than the 250 pages requested would not only aggravate the prejudice already caused at trial [...] by the arbitrary limitation of the number of pages for its Final Brief”, but “also pre-determine on the merits of Ground of Appeal 21”.¹⁹

16. In its response, the Prosecutor submits that the Appeals Chamber should reject the Defence’s request for an extension of 150 pages to its appeal brief. The Prosecutor does not object however to a more modest extension of “approximately 30 pages”, and requests, should an extension of the page limit for the Defence’s appeal brief be granted, a commensurate extension for the Prosecutor’s response to the appeal brief.²⁰

¹³ [Request](#), paras 2, 6.

¹⁴ [Request](#), paras 2-4.

¹⁵ [Request](#), paras 2-4.

¹⁶ [Request](#), para. 3.

¹⁷ [Request](#), para. 3.

¹⁸ [Request](#), para. 4.

¹⁹ [Request](#), para. 5.

²⁰ [Prosecutor’s Response](#), paras 7-9.

17. The Prosecutor submits that while she “agrees that the complexity and novelty of issues raised on appeal may constitute exceptional circumstances”, in her view “such circumstances are not demonstrated *ipso facto* by the number of grounds of appeal a party may intend to raise”.²¹ The Prosecutor argues that the Appeals Chamber should take into account “*all* the relevant circumstances”,²² including that the Trial Judgment “is the shortest in recent years, and relatively straightforward”.²³ Further, the Prosecutor asserts that “reasonable limits on the length of written submissions [...] are not arbitrary”, but “promote clear and focused litigation, and thereby facilitate the fair and expeditious hearing of issues to be resolved [...]”, and “[c]onsequently, it cannot be claimed that a chamber’s disposition of requests for an extension of pages [...] in any way pre-determines its view on the merits of an issue”.²⁴

C. Determination by the Appeals Chamber

18. Regulation 58(3) of the Regulations provides that the appeal brief shall not exceed 100 pages. Pursuant to regulation 37(2) of the Regulations, the Appeals Chamber may extend the applicable page limit “in exceptional circumstances”. In this regard, and as noted by the Defence,²⁵ the Appeals Chamber recalls that its determination under regulation 37(2) of the Regulations is made on a case-by case basis, depending on its assessment of the specific circumstances of each case, and as such, while its previous decisions under this provision may serve to inform its decision in a specific case, the Appeals Chamber is not bound by them.²⁶

19. In the present case, the Appeals Chamber notes the Defence’s argument that the requested additional pages are necessary in light of the “large number of grounds of appeal” identified in the Notice of Appeal, and “the unprecedented and novel issues in relation to various aspects, such as jurisdiction and the *Nullum crimen sine lege*

²¹ [Prosecutor’s Response](#), para. 4; *see also* para. 7.

²² [Prosecutor’s Response](#), para. 4 (emphasis in the original).

²³ [Prosecutor’s Response](#), para. 5.

²⁴ [Prosecutor’s Response](#), para. 6.

²⁵ [Request](#), para. 3.

²⁶ *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, Decision on the “Defence Request for Extension of Page Limit for its Appeal Brief”*, 17 October 2024, ICC-01/12-01/18-2656 (A), para. 11.

principle, issues related to Sudan not being a State Party and the impact of its non-cooperation on the proceedings, and/or the identification of the Appellant".²⁷

20. The Appeals Chamber further notes that the Prosecutor opposes the Request, considering that the requested extension of page limit is not justified in the circumstances of this case, but does not oppose an extension of approximately 30 pages.

21. Taking into account the specific circumstances of this case, including the scope and range of the arguments anticipated in the present appeal, as set out in the Notice of Appeal, the Appeals Chamber considers that the Defence has demonstrated the existence of "exceptional circumstances" within the meaning of regulation 37(2) of the Regulations, justifying an extension of the page limit for the appeal brief.

22. However, the Appeals Chamber is not persuaded that these exceptional circumstances justify an extension of 150 pages as requested by the Defence. In particular, the Appeals Chamber considers that the Defence's arguments on the number of grounds of appeal or nature of some of the issues do not justify, in the present circumstances, the sought extension. Furthermore, the Appeals Chamber considers the Defence's argument that imposing a lower page limit than requested would "aggravate" the prejudice allegedly caused at trial or "pre-determine" the merits of a ground of appeal,²⁸ to be speculative and unfounded. The Appeals Chamber also considers that the additional pages requested would not necessarily contribute to the clarity and focus of the arguments presented.²⁹

23. In these circumstances, the Appeals Chamber finds that an extension of 80 pages, to a total of 180 pages, is sufficient to allow the Defence to articulate its arguments.

²⁷ [Request](#), para. 3 (footnotes omitted).

²⁸ [Request](#), para. 5.

²⁹ See also Appeals Chamber, *The Prosecutor v. Alfred Yekatom and Patrice-Édouard Ngaïssona, Decision on the Yekatom Defence's request for a page limit extension for the appeal brief*, 5 November 2025, ICC-01/14-01/18-2836 (A A2 A3), para. 21; Appeals Chamber, *The Prosecutor v. Bosco Ntaganda, Decision on Mr Ntaganda's request for an extension of the page and time limit for the filing of the appeal brief and related matters*, 20 September 2019, ICC-01/04-02/06-2415 (A), para. 20.

24. Pursuant to regulations 37(2) and 59(2) of the Regulations, the Appeals Chamber finds it appropriate to grant the same page extension of 80 pages to the Prosecutor for her response to the Defence's appeal brief.

Done in both English and French, the English version being authoritative.



Judge Erdenebalsuren Damdin
Presiding

Dated this 21st day of January 2026

At The Hague, The Netherlands