

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: *English*

No.: **ICC-02/05-01/20**
Date: **20 October 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 *ex parte* - Trial Chamber I only - Annex 1

Public Redacted version of the Defence request to submit prior recorded testimony of witnesses pursuant to Rule 68(2)(b) and Rule 68(3) for sentencing

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 Osvaldo Zavala Giler | ☐ Counsel Support Section |
| ☐ Victims and Witnesses Unit | ☒ Detention Section |
| ☐ Victims Participation and Reparations Section | ☐ Other |

I. INTRODUCTION

1. Pursuant to Rule 68(2)(b) and Rule 68(3) of the Rules and Procedure and Evidence (“Rules”) and the Trial Chamber I’s Decision on the sentencing procedure dated on 6 October 2025,¹ the Defence for Mr Ali Muhammad Ali Abd-Al-Rahman hereby seeks the submission 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). This material is relevant to the determination of Mr Abd-Al-Rahman’s sentence. As set out below, the prior recorded testimony sought for submission listed in Annex 1 is probative, bear sufficient indicia of reliability and are not repetitive of evidence already on the record.

II. CLASSIFICATION

2. This Request and its Annex 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]².
3. [REDACTED].
4. A public redacted version of this request will be filed shortly.

PROCEDURAL BACKGROUND

5. 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.³ On the same day, the Chamber issued its Decision on the sentencing procedure, directing the parties and participants to file any request to seek submission of prior recorded testimony pursuant to Rules 68(2)(b) and 68(3) by 20 October 2025.⁴

¹ [ICC-02/05-01/20-1241](#).

² [REDACTED]

³ [ICC-02/05-01/20-1240](#).

⁴ [ICC-02/05-01/20-1241](#), para. 4.

SUBMISSIONS

A. The Statements of D-0040, D-0041 and [REDACTED] should be introduced pursuant Rule 68(2)(b)

6. According to Rule 68(2)(b) of the Rules, the Chamber may allow the introduction of the previously recorded testimony of a witness who is not present before the Chamber when that prior recorded testimony: (i) goes to proof of “a matter other than the acts and conduct of the accused”; and (ii) is accompanied by a declaration by the testifying person, witnessed by a person authorised by the Chamber or in accordance with the law and procedure of a State, as detailed in Rule 68(2)(b)(ii) and (iii) of the Rules.

7. The three statements sought for admission concern issues that do not go to proof of the acts of conduct of Mr Abd-Al-Rahman.

8. D-0040, [REDACTED].⁵ D-0041 [REDACTED].⁶ [REDACTED]

9. Both witnesses provide relevant evidence of Mr Abd-Al-Rahman’s conduct in the locality of Raad-Al-Berdi 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 living in Raad-Al-Berdi.

10. It is submitted that neither statement contains evidence that could reasonably be in dispute. These statements are of relevance to the Trial Chamber’s assessment of Mr Abd-Al-Rahman’s conduct after the events underpinning the charges of which he has been convicted, and in determining the existence of mitigating circumstances.⁷

11. Given the practical difficulties in fulfilling the certification requirements set out in Rule 68(2)(b)(iii), and in line with ICC jurisprudence, the Defence submits that these formalities should be waived.⁸ [REDACTED]

⁵ DAR-D-31-00000357.

⁶ DAR-D-31-00000360.

⁷ *Ntaganda*, Decision on requests for admission of evidence related to sentencing from the bar table, [ICC-01/04-02/06-2402](#), paras. 15, 18.

⁸ *Al Hassan*, Decision on Defence request to dispense with certain certification requirements under Rule 68(2)(b)(ii) of the Rules, [ICC-01/12-01/18-2610](#), para. 6 and 7.

12. The Defence recalls that the practice of the Trial Chamber during trial was to exercise a degree of flexibility in obtaining accompanying Rule 68(2) 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.

13. The Defence also relies on the approach taken by Trial Chamber VII in *Bemba et al.* in which it was considered that it is not necessary for the parties to meet the procedural pre-requisites of Rule 68 of the Rules in order to submit post-conviction witness statements.⁹ Rule 68 procedural pre-requisites are not a procedural bar for sentencing in the same way they are at trial. The same position was also adopted by Trial Chamber IV in the *Ntaganda* case:

[M]indful of the present stage of the proceedings, the Chamber considers that declarations of the witnesses whose prior recorded testimony will be submitted pursuant to Rule 68(2)(b) for the purposes of sentencing need not be witnessed by a member of the Registry as was the case for the declarations accompanying prior recorded testimony admitted under Rule 68(2)(b) during the previous phase of the trial.¹⁰

14. The situation in Sudan, but especially in Darfur, remains extremely precarious due to the ongoing armed conflict. Contacts with defence witnesses are extremely limited and scheduling meetings with the witnesses has been complicated. [REDACTED]. Bearing in mind these difficulties, at the earliest opportunity, the Defence took steps to take statements from these witnesses, which statements – including standard declarations of truth – have more recently been read back and signed. The statements contains sufficient indicia of reliability.

15. The Defence seeks to introduce [REDACTED].

16. [REDACTED].

17. [REDACTED]

18. [REDACTED].

⁹ *Bemba et al.*, Decision on Sentencing Witnesses and Setting an Article 76(2) Hearing, [ICC-01/05-01/13-2025](#), para. 6.

¹⁰ *Ntaganda*, Public redacted version of ‘Preliminary ruling on prior recorded testimony pursuant to Rule 68(2)(b) in relation to sentencing’, [ICC-01/04-02/06-2385-Red](#), para. 10.

19. [REDACTED].

20. [REDACTED].

B. The Statements of D-0016 should be introduced pursuant Rule 68(3)

21. The Defence seeks to introduce the prior recorded testimony of an existing defence witnesses, D-0016, who the Trial Chamber heard from during the trial. He has provided a new witness statement, signed and dated 18 October 2025.¹¹

22. Witness D-0016's prior recorded testimony 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 should 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.

23. D-0016 was interviewed over three days in French and English with Arabic interpretation. The witnesses speaks and understands English and Arabic. At the end of the interview, the statement was read back to him and he was given the opportunity to make any changes or corrections he wanted to. He signed the declaration of truth at the end of the statement, and initialed each page to demonstrate his agreement with their contents. It is submitted that the statement contains sufficient indicia of reliability and is of high probative value.

24. 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, instead of the required 3 sessions for a full evidence-in-chief.

¹¹ DAR-D-31-00000363.

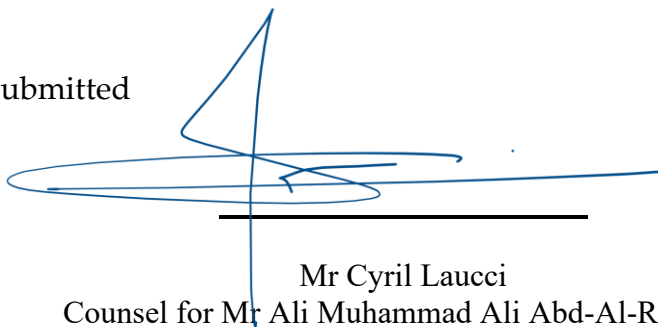
The Prosecution and LRV will no doubt state how long they would need to cross-examine.

25. [REDACTED].

RELIEF SOUGHT

26. In light of the above, the Defence respectfully requests that Trial Chamber I:
- i. **RECOGNISE** the abovementioned material as formally submitted; and
 - ii. **DIRECT** the exemption of the requirement to have a member of the Registry certify the witnesses' declarations pursuant to Rule 68(2)(b)(ii), with respect to the prior recorded testimony sought to be introduced through Rule 68(2)(b) for sentencing purposes.

Respectfully submitted



Mr Cyril Laucci

Counsel for Mr Ali Muhammad Ali Abd-Al-Rahman

Dated this 20 October 2025

At The Hague, The Netherlands