

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: **ICC-02/05-01/20**
Date: **06 November 2025**

THE APPEALS CHAMBER

Before: Judge Erdenebalsuren Dandin, Presiding Judge
Judge Tomoko Akane, Judge
Judge Luz del Carmen Ibañez Carranza, Judge
Judge Solomy Bossa, Judge
Judge Gocha Lordkipanidze, Judge

SITUATION IN DARFUR, SUDAN

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

PUBLIC

Defence Notice of Appeal Pursuant to Article 81(1)(b) of the Rome Statute

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 Zavala Giler, Osvaldo

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and Reparations Section

☐ Other
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1. On 6 October 2025, Trial Chamber I issued its Article 74 Decision (“Trial Judgment”) convicting Mr Ali Muhammad Ali Abd-Al-Rahman (“Mr Abd-Al-Rahman”, “Appellant”) on 27 out of the 31 Counts listed in the Document Containing the Charges against him.
2. Pursuant to Article 81(1) of the Rome Statute (“Statute”), Rule 150(1) of the Rules of Procedure and Evidence (“RPE”) and Regulation 57 of the Regulations of the Court (“RoC”), the Defence for M. Abd-Al-Rahman (“Defence”) hereby submits its notice of appeal:
 - (a) Name and Number of the Case: *The Prosecutor v. Ali Muhamad Ali Abd-Al-Rahman* (‘*Ali Kushayb*’), ICC-02/05-01/20;
 - (b) Title and Date of the Decision: “Trial Judgment”, [ICC-02/05-01/20-1240](#), 6 October 2025;
 - (c) The Appeal is directed against the whole Judgment and on all counts;
 - (d) The Appeal is filed pursuant to Article 81(1)(b) of the Statute;
 - (e) Grounds of appeal: (i) Procedural Error; (ii) Error of Fact; (iii) Error of Law; (iv) Other Grounds that Affect the Fairness or Reliability of the Proceedings or Decision (“Fairness/Reliability Error”): a provisional list of the various grounds of appeal is provided below;
 - (f) Relief sought: Reversal of the Judgment and acquittal of M. Abd-Al-Rahman on all Counts.

PROVISIONAL LIST OF GROUNDS OF APPEAL

3. The below list of grounds of appeal is provisional.
4. Pursuant to Regulation 61 of the RoC, the Defence may seek authorization to complete or amend its grounds of appeal once in receipt of the Arabic version of the Trial Judgment and its Annex B (“Annex B”) and after having received full instructions from M. Abd-Al-Rahman.¹ Any such application will be filed within the time limit set by the Appeals Chamber.
5. On 6 October 2025, the Defence enquired with the Registry Languages Services Section (“LSS”) about the expected time when the Arabic version of the Trial Judgment and its Annex B may become available.² LSS requested that the Defence identify the relevant sections of the Trial Judgment to be translated as a matter of priority. This clarification was submitted on 7 October 2025.³ On 23 October 2025, LSS indicated that the requested sections may become

¹ *Yekatom and Ngaïssona*, Decision on Requests for Extension of Time Limits, [ICC-01/14-01/18-2794 A](#), para. 4.

² Email from the Defence to the LSS, 6 October 2025, 17h01.

³ Email from the Defence to the LSS, 7 October 2025, 11h26.

available in Arabic on 15 December 2025 (for the Trial Judgment) and 14 February 2026 (for Annex B).⁴ The Defence's further enquiry about ways of shortening the time required for the translation was unsuccessful. Subject to any further communication, the Defence is thus planning its work accordingly. Pursuant to Regulation 35(2) of the RoC, an application for extension of the time limit to submit the Appeal Brief will be submitted in due course, once the composition of the Appeal's Bench has become final.

6. Pursuant to Regulation 58(2) of the RoC, the various grounds of appeal will be substantiated in the Appeal Brief. The Defence reserves its rights to reconsider and vary the characterization of its grounds of appeal in its Appeal Brief.⁵

(A) Jurisdiction and the Principle of *Nullum Crimen Sine Lege* (Article 22)

Ground 1 - Error of Law: In violation of Article 22(2) of the Statute, the Chamber erred in extending by analogy the definition of crimes defined under various provisions of Sudanese Law to conclude that these met the requirements for the exercise of jurisdiction of the Court.⁶ None of these provisions relate to War Crimes or Crimes Against Humanity. This error impacted on the findings on jurisdiction on **all Counts**.

Ground 2 – Error of Law: The Chamber erred in finding that the requirements for the exercise of jurisdiction of the Court under Article 22 of the Statute are met in relation to **Count 10**, whereas none of the provisions of Sudanese Law relied upon by the Chamber relate to the forcible transfer of population.⁷ This error impacted on the findings on jurisdiction on **Count 10**.

Ground 3 – Error of Law: The Chamber erred in finding that the requirements for the exercise of jurisdiction of the Court under Article 22 of the Statute are met in relation to **Counts 11, 21 and 31**, whereas none of the provisions of Sudanese Law relied upon by the Chamber relate to Persecution on Political and/or Gender Grounds.⁸ This error impacted on the findings on jurisdiction on **Counts 11, 21 and 31**.

Ground 4 – Error of Law: The Chamber erred in failing to take into account the absence of definition of “lawful order” under Sudanese Law in its assessment of foreseeability of

⁴ Email from LSS to the Defence, 23 October 2025, 17h50.

⁵ *Lubanga*, Appeal Judgment, [ICC-01/04-01/06-3121-Red A5](#), para. 34.

⁶ Trial Judgment, paras. 32-51.

⁷ Trial Judgment, paras. 32-51.

⁸ Trial Judgment, paras. 32-51.

prosecution under Article 22 of the Statute.⁹ This error impacted on the findings on foreseeability and jurisdiction with respect to **all Counts**.

Ground 5 – Error of Fact and/or Law: The Chamber erred in failing to give appropriate consideration to the Appellant’s profile in its assessment of foreseeability of prosecution under Article 22 of the Statute.¹⁰ This error impacted on the findings on the foreseeability and jurisdiction with respect to **all Counts**.

(B) Fair Trial Issues

Ground 6 – Error of Law and/or Fairness/Reliability Error: The Chamber erroneously construes the 2021 Agreement on Cooperation between the Court and Sudan as a special agreement under Article 4(2) of the Statute and fails to draw the legal consequences of the absence of special agreement on the fairness of the proceedings.¹¹ This error had an impact on the fairness of the proceedings (**all Counts**).

Ground 7 – Error of Law and/or Fairness/Reliability Error: The Chamber refuses to draw the consequences on the fairness of the proceedings and reliability of the Trial Judgment in the absence of special agreement under Article 4(2) of the Statute with Sudan on the admissibility of evidence collected in Sudan.¹² This error had an impact on the fairness of the proceedings (**all Counts**).

Ground 8 – Error of Law and/or Fairness/Reliability Error: The Chamber refuses to draw the consequences on the fairness of the proceedings and reliability of the Trial Judgment in its refusal to forbid the Prosecution to disclose the identity of Defence witnesses to third parties, in particular the Sudanese authorities.¹³ This error had an impact on the fairness of the proceedings, in particular the Defence’s capacity to contact and call witnesses (**all Counts**).

Ground 9 – Error of Law and/or Fairness/Reliability Error: The Chamber varies its earlier rulings that the principles of fairness of the proceedings and equality of arms mandate that the Defence be provided with the documents requested from Sudan¹⁴ and fails to draw the

⁹ Trial Judgment, paras. 42-45.

¹⁰ Trial Judgment, paras. 52-59.

¹¹ Trial Judgment, paras. 68-71.

¹² Trial Judgment, para. 65, referring to Annex 1 of the Defence’s Final Brief, [ICC-02/05-01/20-AnxI](#), at (vii).

¹³ Trial Judgment, para. 65, referring to Annex 1 of the Defence’s Final Brief, [ICC-02/05-01/20-AnxI](#), at (xiv).

¹⁴ [ICC-02/05-01/20-695-Red](#), para. 13 ; [ICC-02/05-01/20-806-Red](#), para. 18 ; [ICC-02/05-01/20-1203-Red](#), para. 6.

consequences of its lack of cooperation on the fairness of the proceedings.¹⁵ This error had an impact on the fairness of the proceedings **(all Counts)**.

Ground 10 – Error of Fact and/or Law and/or Fairness/Reliability Error: The Chamber fails to draw the consequences on the fairness of the proceedings of the available evidence of the persistence of an incrimination of cooperation with the Court in Sudan.¹⁶ This error had an impact on the fairness of the proceedings, in particular the Defence’s capacity to contact and call witnesses **(all Counts)**.

Ground 11 – Fairness/Reliability Error: The Chamber fails to draw the consequences on the fairness of the proceedings of Sudan’s description of the Defence’s requests for cooperation as a threat to its national security.¹⁷ This error had an impact on the fairness of the proceedings, in particular the Defence’s capacity to conduct investigations in Sudan and rely on its cooperation **(all Counts)**.

Ground 12 – Fairness/Reliability Error: The Chamber refuses to draw the consequences of the impossibility to protect witnesses in Sudan on the fairness of the proceedings.¹⁸ This error had an impact on the fairness of the proceedings, in particular the Defence’s capacity to contact and call witnesses **(all Counts)**.

Ground 13 – Error of Fact and/or Fairness/Reliability Error: The Chamber errs in fact when it finds that the Defence was granted multi-entry visas to enter Sudan and fails to draw the consequences on the fairness of the proceedings of Sudan’s persistent refusal to issues visas to the Defence team.¹⁹ This error had an impact on the fairness of the proceedings, in particular the Defence’s capacity to conduct investigations in Sudan **(all Counts)**.

Ground 14 – Error of Law and/or Fairness/Reliability Error: The Chamber refuses to draw the consequences on the fairness of the proceedings of the Prosecution’s failure to disclose its scheduled meeting with a man described as Ali Kushayb, as well as other relevant records from

¹⁵ Trial Judgment, paras. 72-96.

¹⁶ Trial Judgment, paras. 101-104.

¹⁷ Trial Judgment, paras. 106-108.

¹⁸ Trial Judgment, paras. 109-115 and Annex 1 of the Defence’s Final Brief, [ICC-02/05-01/20-AnxI](#) at (x).

¹⁹ Trial Judgment, paras. 116-119.

its mission in Khartoum, in June 2006, as revealed in the evidence of Defence Witness D-0016.²⁰ This error had an impact on the findings on the **alias (all Counts)**.

Ground 15 – Procedural Error and/or Error of Law and/or Fairness/Reliability Error:

The Chamber fails to draw the consequences on the fairness of the proceedings of the continuous collection of evidence in relation to the alias by the Prosecution after the confirmation of charges hearing.²¹ This error had an impact on the findings on the **alias (all Counts)**.

Ground 16 – Error of Law and/or Fairness/Reliability Error: The Chamber fails to draw the consequences on the fairness of the proceedings of the Registry’s refusal to provide security support for the Defence’s field missions in Sudan, in breach of the Registry’s mandate and obligations.²² This error had an impact on the fairness of the proceedings, in particular the Defence’s capacity to conduct investigations in Sudan (**all Counts**).

Ground 17 – Fairness/Reliability Error: The Chamber fails to draw the consequences on the fairness of the proceedings of the absence of support provided by the United Nations for the Defence’s field missions in Sudan.²³ This error had an impact on the fairness of the proceedings, in particular the Defence’s capacity to conduct investigations in Sudan (**all Counts**).

Ground 18 – Fairness/Reliability Error: The Chamber fails to draw the consequences on the fairness of the proceedings of the non-disclosure of the *Memorandum of Understanding* between the Office of the Prosecutor and the Government of Sudan.²⁴ This error had an impact on the fairness of the proceedings (**all Counts**).

Ground 19 – Procedural Error and/or Error of Law and/or Fairness/Reliability Error:

The Chamber fails to draw the consequences on the fairness of the proceedings and reliability of the Trial Judgment on the Prosecution’s failure to comply with the Court’s applicable [Information Protection Policy](#) with respect to the protection of its confidential evidence, in the first place witnesses’ statements.²⁵ This error had an impact on the fairness of the proceedings

²⁰ Trial Judgment, paras. 130-134 and Trial Judgment Public Redacted Version of Annex B (“Trial Judgment Annex B”), para. 637.

²¹ Trial Judgment, paras. 135-136 and Annex 1 of the Defence’s Final Brief, [ICC-02/05-01/20-AnxI](#), at (xii).

²² Trial Judgment, para. 65, referring to Annex 1 of the Defence’s Final Brief, [ICC-02/05-01/20-AnxI](#), at (iv).

²³ Trial Judgment, para. 65, referring to Annex 1 of the Defence’s Final Brief, [ICC-02/05-01/20-AnxI](#), at (iii).

²⁴ Trial Judgment, para. 65, referring to Annex 1 of the Defence’s Final Brief, [ICC-02/05-01/20-AnxI](#), at (v).

²⁵ Trial Judgment, para. 65, referring to Annex 1 of the Defence’s Final Brief, [ICC-02/05-01/20-AnxI](#), at (vi).

and on the findings in relation to the reliability of Prosecution evidence, in the first place its witnesses (**all Counts**).

Ground 20 – Procedural Error and/or Error of Law and/or Fairness/Reliability Error:

The Chamber fails to draw the consequences on the fairness of the proceedings and reliability of the Trial Judgment on the adoption by the Registry of the so-called “A-B-C approach” for the admission of victims to participate in the proceedings in violation of Rule 89(1) of the RPE.²⁶ This error had an impact on the fairness of the proceedings, in particular the possibility for the Defence to find relevant information in the narratives of the victims categorized in groups A and B under the A-B-C approach (**all Counts**).

Ground 21 – Procedural Error and/or Error of Law and/or Fairness/Reliability Error:

The Chamber abused its discretion and power by denying, despite exceptional circumstances, the reasonable requests for extension of pages made by the Defence in relation to the submission of its Final Brief and striking from the Record the Defence’s Annex II to its Final Brief, which aimed at showing the extensiveness of the resulting violation of Article 67(1) right to a fair hearing and its serious consequences on the presentation of the Defence’s final arguments.²⁷ This error had an impact on the fairness of the proceedings and on the consideration of the Defence’s submissions in the deliberation of the Trial Chamber (**all Counts**).

(C) Issues Impacting the General Assessment of the Evidence

Ground 22 – Error of Law: The Chamber erred in failing to take into account misrepresentations made in certain Prosecution Witnesses’ asylum applications in its assessments of reliability and credibility.²⁸ This error impacted the findings based on the reliability and credibility of these witnesses (**all Counts**).

Ground 23 – Error of Law: The Chamber erred in its assessment of the reliability and credibility of key insider witnesses.²⁹ This error impacted on the findings on reliability and credibility of the relevant witnesses (**all Counts**).

²⁶ Trial Judgment, para. 65, referring to Annex 1 of the Defence’s Final Brief, [ICC-02/05-01/20-AnxI](#), at (ix).

²⁷ [ICC-02/05-01/20-1201](#), paras. 11-12; [ICC-02/05-01/20-1209](#), paras. 14-15.

²⁸ Trial Judgment, paras. 219-222; Trial Judgment Trial Judgment Annex B, *inter alia* paras. 139 (**P-0584**), 153 (**P-0585**), 176 (**P-0651**), 189 (**P-0712**), 197 (**P-0718**), 201 (**P-0720**), 456 (**P-0935**).

²⁹ Trial Judgment Trial Judgment Annex B, *inter alia* paras. 214-220 (**P-0769**), 325-357 (**P-0905**), 422-427 (**P-0931**), 515-527 (**P-0994**), 528-551 (**P-1021**).

Ground 24 – Error of Law and/or Fairness/Reliability Error: The Chamber erred in failing to consider unreliable aspects of the evidence of Prosecution witnesses without properly assessing the impact on their reliability and credibility.³⁰ Conversely, the Chamber regularly dismissed the entirety of many Defence witnesses’ evidence on the basis that it found a single aspect of their testimony implausible.³¹ This was unfair. This error impacted on the findings on reliability and credibility of the relevant witnesses on both sides, positively for Prosecution witnesses, negatively for Defence witnesses (**all Counts**).

Ground 25 – Error of Law and/or Fairness/Reliability Error: The Chamber erred in dismissing all Defence witnesses coming from the Appellant’s community as implausible on the ground essentially that their evidence contradicted the Prosecution case on the Ali Kushayb alias. Their dismissal relies on no concrete contradictions, no motives to lie, no internal inconsistencies, no proof of collusion or no weakness of their individual evidence, other than their incompatibility with the Chamber’s finding on the alias.³² This error impacted on the findings of reliability and credibility of the relevant witnesses and on the findings on the **alias** (**all Counts**) (see **Ground 15**).

Ground 26 – Error of Law and/or Fairness/Reliability Error: The Chamber erred in inconsistently applying its approach to the consequences of evidence being unchallenged.³³ It systematically accepted as reliable evidence from Prosecution witnesses purportedly inadequately challenged by the Defence in cross-examination,³⁴ yet applied a different standard when the Prosecution failed to challenge **D-0016** regarding his 2006 interaction with a man identified as Ali Kushayb.³⁵ This error impacted the assessment of the evidence and findings on the alias (**all Counts**).

Ground 27 – Error of Law and/or Fairness/Reliability Error: The Chamber erred in its inconsistent approach to the issue of corroboration as a relevant factor as between Prosecution and Defence witnesses,³⁶ thus misapplying the applicable standard of proof beyond reasonable

³⁰ Trial Judgment Trial Judgment Annex B, *inter alia* paras. 342 (**P-0905**), 511-514 (**P-0990**).

³¹ Trial Judgment Trial Judgment Annex B, *inter alia* paras. 580 (**D-0001**), 598 (**D-0003**), 610 (**D-0007**), 618 (**D-0008**), 691 (**D-0035**), 704 (**D-0039**).

³² Trial Judgment Trial Judgment Annex B, *inter alia* paras. 571-575 (**D-0001**), 581-585 (**D-0002**), 590-595 (**D-0003**), 599-604 (**D-0005**), 608-610 (**D-0007**), 614-618 (**D-0008**), 669-672 (**D-0029**), 685-691 (**D-0035**), 701-704 (**D-0039**).

³³ Trial Judgment, paras. 199-201.

³⁴ Trial Judgment Trial Judgment Annex B, *inter alia* paras. 66 (**P-0029**), 255 (**P-0878**).

³⁵ Trial Judgment, para. 133 and Trial Judgment Trial Judgment Annex B, *inter alia* para. 637 (**D-0016**).

³⁶ Trial Judgment Annex B, *inter alia* paras. 141 (**P-0585**), 169 (**P-0643**), 188 (**P-0712**), 355 (**P-0907**), 514 (**P-0990**), 833 (**P-0973**).

doubt. This error impacted negatively on the findings on reliability and credibility of the relevant Defence witnesses (**all Counts**).

Ground 28 – Error of Law: The Chamber erred in its approach to the assessment of admitted “significant inconsistencies” between insider witnesses.³⁷ This error impacted on the findings on reliability and credibility of the relevant Prosecution witnesses (**all Counts**).

Ground 29 – Error of Law: The Chamber erred in its assessment of the credibility of some Prosecution witnesses’ evidence based on contemporaneous notes and other documents, without having the purported notes or documents on record.³⁸ This error impacted on the findings on reliability and credibility of the relevant Prosecution witnesses (**all Counts**).

(D) Issues Impacting the Consideration of Defence Line 1

(“the Appellant as Ali Kushayb”)

Ground 30 – Error of Law: By relying primarily on the 2020 pre-surrender video in its determination as to whether the Appellant is Ali Kushayb,³⁹ the Chamber violated the Appeals Ruling OA12, which limited the video’s admissible purpose to establishing identity for surrender and not as proof of the Appellant’s guilt.⁴⁰ This error impacted on the findings on the **alias**, which are at the very heart of the determination of guilt or innocence (**all Counts**).⁴¹

Ground 31 – Error of Law and/or Fairness/Reliability Error: The Chamber erred in failing to follow a holistic approach in its assessment of the evidence of the nickname Ali Kushayb and misapplied the standard of proof. It relied primarily on Prosecution evidence to conclude that the Appellant is Ali Kushayb,⁴² then used that conclusion in a circular argument to dismiss contradictory Defence testimony as “implausible”,⁴³ rather than weighing holistically all the evidence together before reaching its finding. This error impacted on the findings on the **alias** and on the reliability and credibility of the relevant Defence witnesses (**all Counts**).

³⁷ Trial Judgment Annex B, *inter alia* paras. 30 (P-0012), 263 (P-0878), 294-295 (P-0883), 338 (P-0905), 450 (P-0935).

³⁸ Trial Judgment Annex B, *inter alia* paras. 21-23 (P-0012), 248-249 (P-0877), 254-257 (P-0878), 281-283 (P-0883).

³⁹ Trial Judgment, paras. 242-249, 271.

⁴⁰ [ICC-02/05-01/20-982 OA12](#), paras. 92-96.

⁴¹ Trial Judgment, para. 658.

⁴² Trial Judgment, paras. 238-271.

⁴³ Trial Judgment Annex B, *inter alia* paras. 580 (D-0001), 603 (D-0005), 610 (D-0007), 618 (D-0008), 691 (D-0035), 704 (D-0039).

Ground 32 – Error of Fact and/or Law: The Chamber erred in discounting as immaterial the unchallenged evidence of Witness **D-0016** about his June 2006 interaction with a man introduced to him as Ali Kushayb and the latter’s dissimilarities with the Appellant in terms of position within the Popular Defence Forces (“PDF”), age and appearance.⁴⁴ This error impacted on the findings on the **alias (all Counts)**.

Ground 33 – Error of Fact and/or of Law: In its determination on the alias,⁴⁵ the Chamber erred in its approach to inconsistencies in the evidence regarding Ali Kushayb’s physical description and the Appellant’s actual features.⁴⁶ In several instances, those discrepancies are not even mentioned in the Chamber’s assessment of the witnesses’ evidence. This error impacted on the findings on the **alias (all Counts)**.

Ground 34 – Error of Fact and/or of Law: The Chamber erred in selectively relying on witness evidence that Ali Kushayb was about the same age as the Appellant,⁴⁷ while unreasonably disregarding other, unchallenged evidence that he was significantly younger.⁴⁸ This error impacted on the findings on the **alias (all Counts)**.

Ground 35 – Error of Law: The Chamber erred in its assessment of the Defence argument that the public documents released by the Court in 2007⁴⁹ and related media exposure contaminated witness accounts of the alias.⁵⁰ The Chamber unreasonably failed to consider this factor in its assessment of the evidence, including in Annex B. This error impacted on the findings on the **alias (all Counts)**.

Ground 36 – Error of Law and/or Procedural Error: The Chamber erred in relying on vague, untested and unverified media reports of the 2013 Rahad Al-Berdi events and the Appellant’s

⁴⁴ Trial Judgment, para. 133 and Trial Judgment Annex B, *inter alia* para. 637.

⁴⁵ Trial Judgment, paras. 238-271.

⁴⁶ See Defence Final Brief, paras. 735-744. Trial Judgment Annex B, *inter alia* paras. 24-29 (**P-0012**) (omitting DAR-OTP-0119-0503-R01, para. 38), 57 (**P-0029**) (“hole in right ear”), 83 (**P-0129**) (omitting T-076, p. 16, “crooked”), 122 (**P-0581**) (“tribal piercing”), 238-244 (**P-0877**) (omitting T-055, pp. 72-74, hole or cut in ear), 312-315 (**P-0903**) (omitting T-033, p. 68, hole or cut in ear), 326-329 (**P-0905**) (omitting T-087, p. 27, “scars on both cheeks” and p. 29: “leaning forward”, “crunch”), 359-361 (**P-0913**) (omitting T-069, p. 67 “piece of jewellery in one ear”), 371 (**P-0916**) (“hole in ear lobe”), 429 (**P-0932**) (“pointed head”, “hump”, “pierced ears”), 516-518 (**P-0994**) (omitting DAR-OTP-0222-0055-R01, para. 23 “bending down” and T-084, p. 42, “scars on forehead”), 560 (**P-1073**) (“scar on his forehead”).

⁴⁷ Trial Judgment, para. 262 (c).

⁴⁸ Trial Judgment Annex B, *inter alia* paras. 485 (**P-0986**), 566 (**P-1074**), 637 (**D-0016**).

⁴⁹ [ICC-02/05-56](#); DAR-D31-00000009 ; [ICC-02/05-01/07-3-Corr.](#)

⁵⁰ Trial Judgment, paras. 263-264.

assassination attempt in Nyala, to support its finding on the alias.⁵¹ This error impacted on the findings on the **alias (all Counts)**.

Ground 37 – Error of Law and/or Procedural Error: The Chamber erred in relying on Prosecution witnesses’ purported recognition of the Appellant as Ali Kushayb in videos and/or photographs,⁵² without considering the impact of wide dissemination of his image as representing Ali Kushayb through ICC and media coverage since 2007 and, more recently, since his surrender to the Court, on the probative value of such identifications. This error impacted on the findings on the **alias (all Counts)**.

Ground 38 – Error of Law and/or Procedural Error: The Chamber erred in conflating contemporaneous knowledge with *ex post facto* recognition, erroneously according weight to purported spontaneous in-court identifications of the Appellant by witnesses as proof that they knew him in 2003-2004.⁵³ In doing so, the Chamber departs from its own rule regarding in-court identification.⁵⁴ This error impacted on the findings on the **alias (all Counts)**.

Ground 39 – Error of Fact and/or Law: The Chamber erred in taking into consideration the “renown” of the Appellant as Ali Kushayb in its determination on the alias.⁵⁵ This error impacted on the findings on the **alias (all Counts)**.

(E) Issues Impacting the Consideration of Defence Line 2 (the Appellant’s Authority over the *Janjaweed*)

Ground 40: Error of Law and/or Procedural Error: The Chamber erred in summarily dismissing Defence Line 2 without a reasoned finding on challenging the Appellant’s alleged authority over the *Janjaweed*. The Chamber simply acknowledged that “*the evidence does not clearly reveal why a retired Musa’id in the medical corps of the SAF, who became a pharmacist, should have achieved such a position in the area*”.⁵⁶ This amounts to a major misapplication of the standard of proof beyond reasonable doubt, which impacted the findings on the alleged **authority** of the Appellant over the *Janjaweed* and on **Defence Line 2 (all Counts)**.

⁵¹ Trial Judgment, para. 268.

⁵² Trial Judgment, paras. 254-261.

⁵³ Trial Judgment, para. 215.

⁵⁴ **P-0922**: T-039, p. 28, lines 4-13.

⁵⁵ Trial Judgment, para. 172.

⁵⁶ Trial Judgment, paras. 339-348, 679, 983; Trial Judgment Annex B, *inter alia* para. 697 (**D-0036**).

Ground 41: Error of Fact and/or of Law: All the Chamber’s legal findings with respect to the commission of the crimes charged are null and void and fail to support a conviction because they are limited to concluding that the crimes described in the charges were committed by “the *Janjaweed*” without identifying who they are.⁵⁷ This error impacted on legal findings made in Section 7-II of the Trial Judgment (**all Counts**).

Ground 42: Error of Fact and/or of Law and/or Procedural Error: The Chamber erred in its assessment of the evidence provided by the Defence relating to the composition and structure of the *Janjaweed*.⁵⁸ This error had an impact on the findings on the alleged **authority** of the Appellant over the *Janjaweed* and on **Defence Line 2 (all Counts)**.

Ground 43: Error of Fact and/or Law: The Chamber erred in finding that the Appellant was a leader of the *Janjaweed*⁵⁹ without having identified that group, without establishing a chain of command within that group, and without explaining how he became a leader, while admitting that “*the evidence does not clearly reveal why*”. The Chamber thus failed to apply the standard of proof beyond reasonable doubt.⁶⁰ This error had an impact on the findings on the alleged **authority** of the Appellant over the *Janjaweed* and on **Defence Line 2 (all Counts)**.

Ground 44: Error of Fact: The Chamber erred in its approach to the numerous contradictions in the evidence of the role and authority of the Appellant and his purported relations with the GoS authorities, with respect to the recruitment of the *Janjaweed* and to the distribution of weapons and materials to the *Janjaweed*.⁶¹ This error had an impact on the findings on the alleged **authority** of the Appellant over the *Janjaweed* and **Defence Line 2 (all Counts)**.

Ground 45: Error of Fact and/or Law: The Chamber erred in concluding that the Appellant was *Agid Al-Ogada* without defining that title or position.⁶² This error had an impact on the findings on the **authority** of the Appellant over the *Janjaweed* and **Defence Line 2 (all Counts)**.

Ground 46: Error of Fact and/or Law: The Chamber erred in reversing the burden of proof by concluding, in the absence of evidence, that the authority of an *Agid Al-Ogada* extended to

⁵⁷ Trial Judgment, paras. 847, 852, 859, 865, 870, 881, 888, 913, 927, 939, 940, 941.

⁵⁸ Defence Final Brief, paras. 316-349.

⁵⁹ Trial Judgment, paras. 673-674.

⁶⁰ Trial Judgment, paras. 339-348, 679, 983; Trial Judgment Annex B, *inter alia* para. 697.

⁶¹ Trial Judgment, paras. 341, 669-672. The Trial Judgment relied on flawed, contaminated, contradictory and non-reliable evidence provided by witnesses: **P-0011, P-0012, P-0547, P-0643, P-0874, P-0883, P-0905, P-0913 and P-1021**.

⁶² Trial Judgment, para. 675.

the *Agids* of more than one tribe.⁶³ This error had an impact on the findings on the alleged **authority** of the Appellant over the *Janjaweed* and **Defence Line 2 (all Counts)**.

Ground 47 – Error of Law and/or Fairness/Reliability Error: The Chamber erred in its approach to the evidence of Defence witnesses in relation to the position of *Agid Al-Ogada* on the ground that these witnesses were found implausible as a result of their stated ignorance that the Appellant was Ali Kushayb.⁶⁴ This error had an impact on the findings on the alleged **authority** of the Appellant over the *Janjaweed* and **Defence Line 2 (all Counts)**.

Ground 48 – Error of Fact and/or Law: The Chamber erred in reversing the burden of proof by concluding, in the absence of evidence that the *Ta'aisha* tribe – save for some delinquent members - took part in the 2003-2004 counterinsurgency.⁶⁵ This error had an impact on the findings on the alleged **authority** of the Appellant over the *Janjaweed* and **Defence Line 2 (all Counts)**.

Ground 49 – Error of Fact and/or Law and/or Procedural Error: The Chamber erred in its approach to the evidence that Lieutenant Hamdi, in addition to leading the Military Intelligence Unit in Garsila, was also appointed the PDF Commander and was thus, in that capacity, the most senior leader of the *Janjaweed* in the area.⁶⁶ This error had an impact on the findings on the alleged **authority** of the Appellant over the *Janjaweed* (**all Counts**).

Ground 50 – Error of Fact and/or Law and/or Procedural Error: The Chamber erred in its approach to the evidence that Hassaballah was the PDF Coordinator in Garsila, and was in charge of commanding PDF troops in Kodoom, Bindisi, Sindu, Mukjar and Deleig operations.⁶⁷ This error had an impact on the findings on the alleged **authority** of the Appellant over the *Janjaweed* during these operations (**all Counts**).

Ground 51 – Error of Fact and/or Law and/or Procedural Error: The Chamber erred in its approach to the evidence that Solonga was the PDF Coordinator in Mukjar, was considered a Lieutenant-Colonel of the *Janjaweed*, and was in charge of commanding PDF troops in, at least, Kodoom, Bindisi, Sindu and Mukjar operations.⁶⁸ This error had an impact on the findings on

⁶³ Trial Judgment, para. 325, footnote 722.

⁶⁴ Trial Judgment Annex B, *inter alia* paras. 576 (D-0001), 596-598 (D-0003), 605 (D-0005), 674 (D-0029), 706 (D-0039).

⁶⁵ Trial Judgment, para. 324, footnote 712.

⁶⁶ Trial Judgment, *inter alia* paras. 664-668.

⁶⁷ Trial Judgment, *inter alia* paras. 664-668, 962.

⁶⁸ Trial Judgment, *inter alia* paras. 664-668.

the alleged **authority** of the Appellant over the *Janjaweed* during these operations (**Counts 1-21**).

Ground 52 – Error of Fact and/or Law and/or Procedural Error: The Chamber erred in its approach to the evidence that Emir Hessine Sayyid Al Helu, the Emir of all Arab Tribes for Wadi Saleh, was elected by the *Umdahs* of all Arab tribes with no *dar* in Wadi Saleh – which excludes the *Ta’aisha* - and played the central role in the mobilization, equipping, arming and conduct of operations of Arab tribal militias in the area, but disregarded this evidence in its determination on the authority exercised by Ali Kushayb.⁶⁹ This error had an impact on the findings on the alleged **authority** of the Appellant over the *Janjaweed* and **Defence Line 2 (all Counts)**.

Ground 53 – Error of Fact: The Chamber erred in relying on the Appellant’s position of authority in the Central Reserve Forces (“CRF”) as evidence of his alleged position of authority in 2003-2004.⁷⁰ The Chamber further erred in its assessment of the evidence that his position held in the CRF was obtained after several months of training in El Obeid.⁷¹ The evidence relied upon by the Chamber is related to a different period of time. This error had an impact on the findings on the **authority** of the Appellant over the *Janjaweed* (**all Counts**).

(F) Issues Impacting the Consideration of Defence Line 3 (Mistake of Law)

Ground 54: Error of Law and/or Procedural Error: The Chamber erred in its assessment of Defence Line 3 relating to the Appellant’s lack of knowledge of the criminal nature of his acts in violation of Article 74(5) of the Statute.⁷² This error had an impact on the findings on **Defence Line 3 (Mistake of Law)** and the alleged **responsibility** of the Appellant (**all Counts**).

Ground 55 – Error of Fact and/or Law: The Chamber erred in its assessment of the evidence of the Appellant’s leadership of the *Janjaweed* in concluding that he should have known that his acts incurred criminal liability, without having identified who the *Janjaweed* were, nor the Appellant’s alleged leadership position, nor its relevance for the test.⁷³ This error had an impact on the findings on **Jurisdiction (all Counts)**.

⁶⁹ Trial Judgment, para. 672.

⁷⁰ Trial Judgment, para. 680, footnote 2277.

⁷¹ Trial Judgment, para. 94.

⁷² Trial Judgment, *inter alia* paras. 50, 52-59, 705-706, 948.

⁷³ Trial Judgment, para. 59.

Ground 56 – Error of Fact and/or Law: The Chamber erred in failing to take into account relevant provisions of the law of Sudan excluding criminal liability for acts performed by a person duly authorized by law or bound by a legal order issued by a competent authority.⁷⁴ The Chamber further erred in failing to take into account the provisions punishing by death penalty the disobedience to obey orders while on operation.⁷⁵ These error led to the erroneous conclusion that the domestic Law of Sudan clearly described the prohibited conduct and crimes comparable to the crimes charged.⁷⁶ This error had an impact on the findings on **Defence Line 3 (Mistake of Law) (all Counts)**.

Ground 57 – Error of Fact and/or Law: The Chamber erred in attaching any relevance to the question as to whether Harun had authority or not to declare the Fur *ghanima* and to order their looting, killing and raping. The Chamber further erred in its assessment of whether the Appellant, assuming his presence, could reasonably perceive Harun’s speech as an instruction.⁷⁷ This error had an impact on the findings on both **jurisdiction** and the **Defence Line 3 (Mistake of Law) (all Counts)**.

(G) Contextual Elements of the Crimes

Ground 58 – Error of Fact and/or Law: The Chamber erred in its assessment of the nexus requirement for War Crimes by concluding that the crimes were committed as part of, or in the context of the “perpetrators’ official duties,”⁷⁸ without having defined who the perpetrators are – the *Janjaweed* – and the nature and source of their “official duties.” Absent these identifications, the nexus is not proved. This error had an impact on all findings of guilt for **War Crimes**.

Ground 59 – Error of Fact and/or Law: The Chamber erred in its assessment of the evidence of the nexus requirement for War Crimes, including a purported speech delivered by the Appellant.⁷⁹ This error led to the erroneous conclusion that the acts and conducts served the

⁷⁴ DAR-OTP-0021-0296, The Criminal Act 1991, Article 11.

⁷⁵ DAR-OTP-00006136, People’s Armed Forces Act 1986, Article 48(c).

⁷⁶ Trial Judgment, para. 59.

⁷⁷ Trial Judgment, paras. 41, 1003-1005.

⁷⁸ Trial Judgment, para. 811.

⁷⁹ Trial Judgment, paras. 354, 367.

ultimate goal of a “military campaign”⁸⁰ and that is “government-backed military attacks”.⁸¹ This error had an impact on all findings of guilt for **War Crimes**.

Ground 60 – Error of Fact and/or Law: The Chamber erred in its assessment of the evidence of the Appellant’s awareness of a State Policy by August 2003 on the sole basis of his alleged attendance at Harun’s speech in Mukjar.⁸² This error had an impact of all findings of guilt for **Crimes Against Humanity**.

Ground 61 – Error of Law: The Chamber erred in convicting the Appellant for Crimes against Humanity in Kodoom and Bindisi in August 2003, whereas it finds that the State policy element of Crimes Against Humanity was only formalized on 18 December 2003 with the NSC’s adoption of the Emergency Plan.⁸³ The Chamber erred in its approach to its assessment of when the State Policy first came into existence. This error had an impact on all findings of guilt for **Crimes against Humanity** in Kodoom and Bindisi.

Ground 62 – Error of Fact and/or Law: The Chamber erred in its finding of a State Policy targeting the civilian population in Mukjar and Deleig, in spite of its inconsistency with the Chamber’s other findings that Fur community leaders, local inhabitants, women, children and elders were not targeted,⁸⁴ and that even Fur men were incorporated in the Popular Police Forces over the same period and in the same region.⁸⁵ This error had an impact on all findings of guilt for **Crimes against Humanity**.

(H) Issues in Relation to Specific Charges: Kodoom and Bindisi

Grounds listed under Chapters (A), (C) to (G) and (J) also apply with respect to the Chamber’s findings in relation to Kodoom and Bindisi.

Ground 63 - Error of Fact and/or Law and/or Procedural Error: The Chamber erred in not considering the Defence arguments of **P-0878** as being the main instigator of the attack on

⁸⁰ Trial Judgment, para. 367.

⁸¹ Trial Judgment, paras. 811-812, footnote 2550.

⁸² Trial Judgment, paras. 349-367, 381-391, 815-839.

⁸³ Trial Judgment, para. 823.

⁸⁴ Trial Judgment, paras. 471, 484, 934. The Defence notes that the Trial Chamber contradicts itself by simultaneously finding that children were not arrested and that “young boys as young as 9 or 10 years old were detained” and amongst the torture and murder victims during the Mukjar Operation, *See* Trial Judgment paras. 494, 822, 879.

⁸⁵ Trial Judgment, footnote 792, paras. 358, 464.

Kodoom and Bindisi.⁸⁶ The Chamber further erred in its conclusion that “*there was no evidence or indeed no suggestion that P-0878 was in command during the operation*”.⁸⁷ This error had an impact on the findings of guilt for **Counts 1-11**.

Ground 64 – Error of Law: The Chamber erred in convicting the Appellant for crimes in Kodoom and Bindisi under the mode of liability of ordering⁸⁸ without having identified the *Janjaweed* over whom he is found to have had authority to issue orders.⁸⁹ This error had an impact on the findings of guilt for **Counts 1-11**.

Ground 65 - Error of Fact and/or Law: The Chamber erred in its assessment of the evidence of events in locations outside the scope of the charges to fix the Appellant with knowledge of what would occur in the ordinary course of events in Kodoom and Bindisi.⁹⁰ This error had an impact on the findings of guilt for **Counts 1-11**.

Ground 66 – Error of Fact and/or Law: The Chamber erred in finding that the Appellant’s liability for ordering the crimes in Kodoom was proved beyond reasonable doubt on the sole alleged order to torture **P-0986**,⁹¹ which had no causal effect,⁹² and in the absence of evidence of any other order.⁹³ This error had an impact on the findings of guilt on **Counts 1-5 and 8-10** with respect to events in **Kodoom**.

Ground 67 – Error of Fact and/or Law: The Chamber erred in finding that the Appellant’s liability for ordering the crimes in Bindisi was proved beyond reasonable doubt on the sole basis of the evidence of the alleged speech of 16 August 2003 reported at paragraph 439 of the Judgment.⁹⁴ Gestures and chants⁹⁵ cannot equate orders under Article 25(3)(b) of the Statute. This error had an impact on the findings of guilt for all crimes (**Counts 1-11**) committed in Bindisi on the first day of the attack, 15 August 2003.

⁸⁶ Defence Final Brief, para. 385, relying on **P-0878**: T-078, p. 17, lines 16-22 (Conf).

⁸⁷ Trial Judgment Annex B, para. 268.

⁸⁸ Trial Judgment, paras. 998-1012.

⁸⁹ Trial Judgment, footnotes 1009-1010, paras. 392, 900-906, 1002, 1005, 1008-1012.

⁹⁰ Trial Judgment, paras. 869, 1001, 1008-1012.

⁹¹ Trial Judgment, paras. 414, 1003(f)-(g).

⁹² Trial Judgment, paras. 414, 1006-1007.

⁹³ Trial Judgment, paras. 404-416, 1003-1005.

⁹⁴ Trial Judgment, paras. 420-441, 1003(i).

⁹⁵ Trial Judgment, paras. 1004-1005.

Ground 68 – Error of Fact and/or Law: The Chamber erred in convicting the Appellant for rapes in Bindisi without evidence that he ever ordered rape.⁹⁶ This error had an impact on the findings of guilt for **Counts 8 and 9**.

(I) Issues in Relation to Specific Charges: Mukjar and Deleig

Grounds listed under Chapters (A), (C) to (G) and (J) also apply with respect to the Chamber’s findings in relation to Mukjar and Deleig.

Ground 69 – Error of Fact and/or Law: The Chamber erred in its assessment of the evidence of the Appellant’s direct perpetration of crimes by accepting evidence that Ali Kushayb perpetrated those crimes as evidence that the Appellant is guilty under that mode of liability on the basis of its conclusion that the Appellant is Ali Kushayb.⁹⁷ This error had an impact on the findings of guilt on **Counts 12, 13, 16, 21, 22, 23, 26 and 31**.

Ground 70 – Error of fact and law: The Trial Chamber erred by concluding that, in the alleged common plans in both Mukjar and Deleig, the Appellant had control over the crimes. The Trial Chamber further erred in finding that the evidence established beyond reasonable doubt that: a) the agreement between several persons on a common plan, and their specific role as key members of the common plan,⁹⁸ b) the essential contribution of the Appellant into the crimes in furtherance of the common plans and the resulting power to frustrate the commission the crimes,⁹⁹ c) the Appellant’s knowledge and intent and his understanding that through his (essential) contribution he knew and agreed to the realisation of the common plan resulting in the commission of the crimes.¹⁰⁰ This error had an impact on findings of guilt for **Counts 12-31**.

Ground 71 – Error of Fact and/or Law: The Chamber erred in convicting the Appellant for crimes in Mukjar and Deleig under the mode of liability of co-perpetration without having identified a) the *Janjaweed* over whom he was found to have used his authority, or b) how he exercised authority “other low ranking members”¹⁰¹ to make an essential contribution to the

⁹⁶ Trial Judgment, paras. 431-434, 866-870, 1003-1005.

⁹⁷ Trial Judgment, para. 658.

⁹⁸ For Mukjar See Trial Judgment, paras. 960-971, particularly para. 962; For Deleig, See Trial Judgment, paras. 972-981.

⁹⁹ Trial Judgment, paras. 982-989.

¹⁰⁰ Trial Judgment, paras. 990-996.

¹⁰¹ Trial Judgment, para. 983 See also paras. 660-680.

common plan¹⁰² This error had an impact on findings of guilt for **Counts 12-13, 16-23 and 26-31**.

Ground 72 - Error of Fact: The Chamber erred in making findings about the detention and beating of children in Mukjar solely on the basis of two Prosecution Witnesses who were not found reliable in this respect.¹⁰³ This error had an impact on the findings of guilt *vis-à-vis* crimes against vulnerable persons, i.e. children,¹⁰⁴ in Mukjar (**Counts 12-21**).

Ground 73 – Error of Fact and Law: The Chamber erred in its approach to the evidence regarding the mistreatment of detainees at the Mukjar police station largely based on the uncorroborated evidence of a single witness, **P-0919**.¹⁰⁵ This error had an impact on the findings of guilt on **Counts 12, 13 and 16**.

Ground 74 – Error of Fact and Law: The Chamber erred in its approach to the evidence of the impact of the position of authority and presence of Lieutenant Hamdi in Deleig¹⁰⁶ on the authority of the Appellant and his contribution to the common plan. This error had an impact on all findings of guilt for **Counts 22-31**.

Ground 75 – Error of Fact and/or Law: The Chamber erred in its approach to the weight given to the evidence of arrests and detentions in Garsila before the events in Deleig¹⁰⁷ and of the arrests and mistreatment of Fur men and boys in Deleig on 5th March 2024,¹⁰⁸ as well as the detention and subsequent crimes at the Deleig police station and at different locations outside Deleig.¹⁰⁹ In particular, the Chamber erred in taking into account the presence, authority and role of Lieutenant Hamdi and other superiors in relation to these incidents.¹¹⁰ This error had an impact on the findings of guilt on **Counts 22-31**.

Ground 76 – Error of Fact and/or Law: The Chamber erred in its approach to the evidence of the arrests and detention of “boys” in Deleig,¹¹¹ by failing to take into account the relevant

¹⁰² Trial Judgment, paras. 982-989.

¹⁰³ Trial Judgment, paras. 494, 506, 822; 879; 943; Trial Judgment Annex B, paras. 93 (**P-0129**), 342 (**P-0905**).

¹⁰⁴ See e.g.: Trial Judgment, paras. 822, 879, 943.

¹⁰⁵ Trial Judgment, paras. 527, 530, 542, 873, 903 and Trial Judgment Annex B, paras. 388-389 (**P-0919**).

¹⁰⁶ Trial Judgment, footnotes 1991, 2959.

¹⁰⁷ Trial Judgment, paras. 580-582, 586.

¹⁰⁸ Trial Judgment, paras. 591-602.

¹⁰⁹ Trial Judgment, paras. 603-650.

¹¹⁰ Trial Judgment, paras. 580, 582, 585-586, footnote 1912, paras. 604-607, 649, 977. See also, **P-0994**, considered wrongly as credible in concealing that he was not in charge of the detainees despite his functions, and could not be able to remember at the time who was his superior. Trial Judgment Annex B, para. 522 (**P-0994**).

¹¹¹ Trial Judgment, paras. 593, 598, 874, 995.

evidence of **P-0607**, **P-0651** and **P-0907**. This error had an impact on the findings of guilt on **Counts 22-31**.

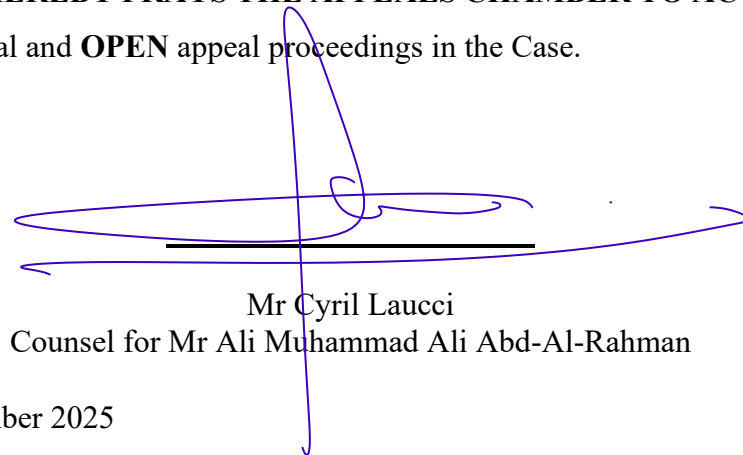
(J) Persecution

Ground 77 – Error of Law: The Chamber erred in its assessment of the Prosecution’s over-extended theory of “intersectionality” in its treatment of the charges of persecution.¹¹² This error had an impact on the findings of guilt on **Counts 11, 21 and 31**.

Ground 78 Error of Fact and/or Law: The Chamber erred in its approach to the issue of gender persecution and erroneously construed the arrest and selection of suspected rebels in Mukjar and Deleig as being founded on considerations of gender.¹¹³ This error had an impact on findings of guilt on **Counts 21 and 31**.

Ground 79 – Error of Fact and/or Law: The Chamber erred by relying on facts falling outside the scope of the charges – namely acts performed at the Mukjar locality building – in support of its findings on persecution.¹¹⁴ This error had an impact on the finding of guilt on **Count 21**.

THE DEFENCE HEREBY PRAYS THE APPEALS CHAMBER TO ACCEPT NOTICE of the present Appeal and **OPEN** appeal proceedings in the Case.



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

Dated this 06 November 2025

At The Hague, The Netherlands.

¹¹² Trial Judgment, para. 787.

¹¹³ Trial Judgment, paras. 996, 934, 936, 937.

¹¹⁴ Trial Judgment, para. 934.