

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-01/20
Date: 05 December 2025

THE APPEALS CHAMBER

Before: Judge Erdenebalsuren Dandin, 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

Application for Extension of Time to File the Defence Appeal Brief

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

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☒ Legal Representatives of the Victims

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☐ The Office of Public Counsel for Victims

☒ The Office of Public Counsel for the Defence

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1. On 6 November 2025, the Defence for Mr Ali Muhammad Ali Abd-Al-Rahman (“Defence”; “Mr Abd-Al-Rahman”, “Appellant”) submitted its Notice of Appeal¹ against the Article 74 Decision issued on 6 October 2025 (“Trial Judgment”)² by Trial Chamber I. The Notice of Appeal started the appeal proceedings (“Appeal Proceedings”) in the Abd-Al-Rahman Case.
2. On 14 November 2025, the Defence filed a first application seeking postponement of the time limit to file its Appeal Brief (“First Application”).³
3. In its Response to the First Application, the Office of the Prosecutor (“OTP”) construed it as an application for extension of time under Regulation 35(2) of the Regulations of the Court (“RoC”) and agreed that the Defence had demonstrated good cause for an extension of the time limit to file its Appeal Brief until 2 March 2026 (“Response”).⁴
4. On 2 December 2025, the Honourable Appeals Chamber (“Appeals Chamber”) denied the First Application on the ground that in essence, the request was for an extension of time pursuant to Regulation 35(2) of the RoC.⁵
5. The Defence, taking note of the AC Ruling, now applies for an extension of the time limit for the submission of its Appeal Brief. Under Regulation 58(1) of the RoC, the time limit ends on 5 January 2026. The Defence hereby requests the extension of the 90-day time limit by 85 days, **i.e. until 31st March 2026**. The Defence submits that the criterion of good cause applicable under Regulation 35(2) of the RoC is met in the present case for the reasons provided below.

The “good cause” criterion under Regulation 35(2) is met

¹ [ICC-02/05-01/20-1261 A.](#)

² [ICC-02/05-01/20-1240.](#)

³ [ICC-02/05-01/20-1269 A.](#)

⁴ [ICC-02/05-01/20-1272 A.](#)

⁵ [ICC-02/05-01/20-1277 A.](#), paras. 22-23.

6. The Defence submits that the “good cause” criterion for an extension of the time limit applicable under Regulation 35(2) of the RoC is met in the present case by a variety of cumulative factors. These are: (i) parallel sentencing proceedings which have heavily utilised Defence resources between 6 October and 19 November 2025; (ii) the time required for the translation of the relevant portions of the Trial Judgment and its Annex B into Arabic, so that the Appellant can fully understand it and provide informed instructions to the Defence team; (iii) additional delays incurred by the resolution of pending legal aid issues impacting on the Defence’s preparation of its Appeal Brief; (iv) the days of ICC public holidays over the relevant period; and (v) the number, novelty and complexity of issues covered by the grounds of appeal. The Defence addresses these one by one in the same order, but submits that it is the cumulative effect of these five factors which provides good cause for the requested extension of time limit.

(i) Good Cause: Parallel Sentencing Proceedings

7. Between the issuance of the Trial Judgment on 6 October 2025 until the completion of the oral arguments on sentencing, on 19 November 2025, i.e. for 44 days, the Defence resources were substantially mobilized by Sentencing Proceedings running in parallel to the 90-day time limit for submission of the Defence Appeal Brief under Regulation 58(1) of the RoC.

8. Over that period, the Defence was able to prepare, draft and submit its Notice of Appeal on 6 November 2025,⁶ without seeking an extension of the 30-day time limit provided under Rule 150 of the Rules of Procedure and Evidence (“RPE”). In its Response, the OTP acknowledged this noticeable effort towards the expeditious conduct of the proceedings.⁷

⁶ [ICC-02/05-01/20-1261 A](#).

⁷ [ICC-02/05-01/20-1272 A](#), para. 8.

9. Despite its best efforts, the Defence requires more time to prepare a meaningful and persuasive Appeal Brief beyond 5 January 2026. Appeals Chamber jurisprudence supports the argument that the running in parallel of other pending work and the consequent workload bearing on a Party constitute good cause under Regulation 35(2) of the RoC.⁸ The Defence submits that the fact that Sentencing Proceedings ran in parallel to the preparation of its Defence Brief for 44 days now provides good cause for the requested extension of time.

(ii) Good Cause: Official translation of relevant portions of the Trial Judgment and its Annex B into Arabic

10. This second factor formed the principal basis for the Defence's First Application. In its Response, the OTP considered that this factor alone provided good cause for an extension of the time limit for submission of the Defence Brief by 56 days, i.e. until 2 March 2026.⁹ This was, of course, without considering the additional factors relied upon in the present application. The Appeals Chamber has already considered that the unavailability of relevant portions of a Trial Judgment in a language that the Appellant understands and speaks provides good cause for an extension of time to submit a Defence Appeal Brief.¹⁰

11. On 27 November 2025, i.e. after the OTP's Response, the Registry confirmed the time that would be required to complete the translation of the Trial Judgment and Annex B into Arabic.¹¹ The Registry's estimate confirms the details submitted in the Defence's First Application. The Defence's estimation of the impact of this translation work on the preparation of its Appeal Brief is significant. As rightly submitted by the OTP in its Response, the Defence's First Application would have resulted in an extension of the time limit to submit its Defence Brief by 70 days, i.e. from 5 January

⁸ *Lubanga*: [ICC-01/04-01/06-190 OA3](#), paras. 4-5; *Katanga*: [ICC-01/04-01/07-653 OA7](#), paras. 2, 6; *DRC*: [ICC-01/04-518 OA6](#), paras. 2, 4.

⁹ [ICC-02/05-01/20-1272 A](#), para. 10.

¹⁰ *Al Hassan* : [ICC-01/12-01/18-2606 A](#), paras. 10, 13 ; *Ongwen* : [ICC-02/04-01/15-1781 A](#), para. 12.

¹¹ [ICC-02/05-01/20-1275 A](#).

2026 to 16 March 2026. The Registry's confirmation of the required time thus provides another good reason for extension of time limit by 70 days. This is in addition to the first 44 days justified under the previous ground demonstrating good cause, for a total of 114 days of extension.

(iii) Good Cause: Ongoing Legal Aid Issues

12. The Defence had also relied on this factor in its First Application.¹² In its Response, the OTP challenged the appropriateness and necessity of this argument.¹³ The Defence sincerely wishes that this aspect of its First Application was “*unnecessary*”, but it does not have the luxury of being able to spend, as does the OTP, more than 56 million Euros – more than 4.5 million Euros in 2025 alone - of the ICC budget on the Situation in Darfur.¹⁴ Unlike the OTP, the Defence is reliant on every allocation of funds paid by the Registry under the Legal Aid Policy for its activities. The Defence has no flexibility to absorb any reduction in its legal aid resources, which are thus likely to cause delay in the proceedings. Had it that flexibility, this aspect of the Request may properly be described as “*unnecessary*”, but it is not the case. This aspect is also appropriate, as the legal aid issue is now before the Appeals Chamber under Regulation 83(4) of the RoC and paragraph 102 of the Legal Aid Policy.¹⁵

13. The ongoing legal aid issues impact on the Defence's preparation of its Appeal Brief in the following two ways:

- (i) they have compelled the Defence to divert some of its limited resources to seek review of the Registrar's decisions on legal aid on repeated occasions since the issuance of the Trial Judgment on 6 October 2025. This litigation

¹² [ICC-02/05-01/20-1269 A](#), paras. 11-12.

¹³ [ICC-02/05-01/20-1272 A](#), para. 12.

¹⁴ [ICC-ASP/24/17](#), para. 6.

¹⁵ ICC-02/05-01/20-1274-Conf-Exp.

was accepted as good cause by Trial Chamber I for a limited extension of the time limit to submit the Defence submissions on sentencing by 2 days;¹⁶

- (ii) More importantly, the ongoing legal aid issues have a significant and ongoing impact on the Defence's progress, running in parallel to the efforts of the Registry's language service, in the translation of Annex B into Arabic. Delays in the translation of the relevant portions of Annex B are mechanically delaying the Defence's preparation of its Appeal Brief. Should the Defence's Language Assistant be compelled to work only part-time, at 50%, for 30 days,¹⁷ the concrete impact would be a further delay of 15 days in the Defence's preparation of its Appeal Brief.

14. Although the OTP is not as well placed to understand and assess the impact of these legal aid issues on the working of the Defence as the Defence itself is, the impact is material. It is adding to the Defence's workload and constitutes a factor beyond its control impacting on its progress in the preparation of its Appeal Brief.¹⁸ Ongoing legal aid issues thus form good cause for an extension of time limit by a minimum of 2 and 15 days, equal 17 days, raising the total extension justified by the previous grounds demonstrating good cause to a total of $114 + 17 = 131$ days.

(iv) Good cause: Number of ICC public holidays

15. The current time limit of 90 days running from the date of issuance of the Trial Judgment includes 3 public holidays: Christmas Day, Boxing Day and New Year's Day.

16. The period also includes a judicial recess. Although the Defence is aware of former rulings of the Appeals Chamber factoring periods of judicial recess in for the purpose

¹⁶ ICC-02/05-01/20-1252-Conf; Extension of time granted by email from Trial Chamber I on 30 October 2025, 17h05.

¹⁷ ICC-02/05-01/20-1274-Conf-Exp, para. 16.

¹⁸ *Lubanga*: [ICC-01/04-01/06-190 OA3](#), paras. 4-5; *Katanga*: [ICC-01/04-01/07-653 OA7](#), paras. 2, 6; *DRC*: [ICC-01/04-518 OA6](#), paras. 2, 4.

of demonstrating good cause under Regulation 35(2) of the RoC,¹⁹ the Defence does not factor the end-of-year judicial recess in its calculation, leaving this matter up for the Appeals Chamber's determination. The Lead Counsel can require his team to work over judicial recess, but cannot require his staff to work over public holidays, as these would not be compensated anyway under the Legal Aid Scheme. The number of public holidays thus must, as a minimum, be factored in.

17. This constitutes further good cause to extend the time limit for submission of the Appeal Brief by 3 more days – 23 days if the Appeals Chamber considers the full judicial recess –, for a total of 134 or 154 days of extension justified under grounds (i) to (iv) demonstrating good cause.

(v) Good cause: Number, novelty and complexity of issues

18. Finally, the Defence's Notice of Appeal sets out a total of 79 grounds of appeal. Although not every one of these 79 grounds may be pursued in the Appeal Brief, depending *inter alia* on the instructions received from the Appellant, there nevertheless is an exceptionally high number of issues that the Defence will wish to address in its Appeal Brief. As acknowledged in Appeals Chamber jurisprudence, this can constitute good cause under Regulation 35(2) of the RoC.²⁰

19. Some of these issues are novel and complex. They include matters in relation to the jurisdiction of the Court and the application of the principles of *nullum crimen sine lege*,²¹ fair trial issues,²² the issue of the alleged nickname of Ali Kushayb,²³ mistake of law

¹⁹ *Katanga*: [ICC-01/04-01/07-115 OA](#), paras. 6-7 ; *Katanga*: [ICC-01/04-01/07-121 OA2](#), para. 5; *Banda*: [ICC-02/05-03/09-624 OA5](#), para. 6; *Palestine*: [ICC-01/18-403 OA2](#), para. 7; *Venezuela*: [ICC-02/18-52](#), para. 8.

²⁰ *Lubanga*: [ICC-01/04-01/06-190 OA3](#), paras. 4-5; *Katanga*: [ICC-01/04-01/07-653 OA7](#), paras. 2, 6.

²¹ [ICC-02/05-01/20-1261 A](#), Grounds 1 to 5.

²² [ICC-02/05-01/20-1261 A](#), Grounds 6 to 21.

²³ [ICC-02/05-01/20-1261 A](#), Grounds 30 to 39.

issues,²⁴ and the definition of persecution.²⁵ The novelty and complexity of these issues is another factor demonstrating good cause under Regulation 35(2) of the RoC.²⁶

20. Assessing the impact of the number, novelty and complexity of issues on the time required for the preparation of the Defence's Appeal Brief is not a straightforward exercise. While the Defence is aware of the Appeals Chamber's requirement for a fixed number of days by which extensions of time are sought,²⁷ any fixed number of days proposed would run the risk of being perceived as highly presumptive and arbitrary. The Defence thus respectfully submits that a more reasonable approach is to submit that the number, novelty and complexity of issues increases the number of days required as a percentage, rather than a definite number of days. Even if it is aware that this estimate may transpire to be over-conservative, the Defence estimates, at this juncture, that the number, novelty and complexity of the issues to be raised in appeal should be factored in by raising the total number of days granted on the basis of the previous factors (i) to (iv) by 20%, thus making it reach a total of $134 + 20\% = 134 + 27 = 161$ days, or, should the Appeals Chamber factor in the judicial recess under (iv) above, $154 + 20\% = 154 + 31 = 185$ days.

21. The Defence submits that the circumstances of the case support the request for an extension of the time limit to submit the Appeal Brief by 161 or 185 days – depending on the Appeals Chamber's ruling on the judicial recess - , for a total of 252 or 276 days running from the date of the Trial Judgment, which would vary the time limit for its submission to 16 June 2026, or 10 July 2026.

²⁴ [ICC-02/05-01/20-1261 A](#), Grounds 54 to 57.

²⁵ [ICC-02/05-01/20-1261 A](#), Grounds 77 to 79.

²⁶ *Darfur*: [ICC-02/05-13](#), p. 3; *Lubanga*: [ICC-01/04-01/06-973](#), para. 3; *Katanga*: [ICC-01/04-01/07-115 OA](#), paras. 6-7; *Katanga*: [ICC-01/04-01/07-121 OA2](#), para. 5; *Ruto*: [ICC-01/09-01/11-1346 OA8](#), para. 9; *Al Hassan*: [ICC-02/11-01/15-1268 A](#), para. 8; *Ongwen*: [ICC-01/12-01/18-2606 A](#), paras. 12-13; *Palestine*: [ICC-01/18-403 OA2](#), para. 7.

²⁷ *Bemba*: [ICC-01/05-01/08-631 OA2](#), paras. 33-34.

The requested extension of 85 days is reasonable

22. It is submitted that the above calculation justifying an extension by 161 days is both reasonable and conservative. It relies on the Defence's efforts to translate Annex B in Arabic in parallel to the Registry's progress in translating the Trial Judgment; it does not take advantage of the judicial recess; and it does not claim more than 20%, 27 days, as a result of the number, novelty and complexity of the issues to be addressed in appeal. The Defence could find grounds to claim much more.

23. As already mentioned, factors (i) to (v) are cumulative. The resulting extensions of time under each factor cannot be merged into the longest extension – 70 days under factor (ii) -, as this would result in neglecting the impact of the other factors on the preparation of the Appeal Brief.

24. The Defence team is fully mobilized, has been working hard and will carry on doing so in the preparation of the Defence Brief. The Defence team is determined to complete and believes it is capable of completing its Appeal Brief within 175 days only, instead of 251 or 275, which would mean an extension of the 90 days' time limit to submit its Appeal Brief by 85 days only, instead of 161 or 185, and its submission by 31st March 2026, instead of 5 January 2026.

25. In its Response, the OTP already acknowledged the reasonableness of an extension of the time limit by 56 days, i.e. until 2 March 2026, on the sole factor (ii) above. It is the Defence's submission that there is more than good cause making reasonable a further extension to a total of 85 days on the basis of additional factors (i), (iii), (iv) and (v) above.

THE DEFENCE HEREBY PRAYS THE APPEALS CHAMBER TO FIND that there is good cause to extend the time limit for submission of the Appeal Brief from 5 January to 31st March 2026 and **TO GRANT** the requested extension accordingly.



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

Dated this 05 December 2025

At The Hague, The Netherlands.