

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: **ICC-02/05-01/20**
Date: **8 January 2026**

THE APPEALS CHAMBER

Before: Judge Erdenebalsuren Damdin, Presiding Judge
Judge Luz del Carmen Ibañez Carranza, Judge
Judge Solomy Bossa, Judge
Judge Gocha Lordkipanidze, Judge
Judge Keebong Paek

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(2) 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

1. On 9 December 2025, Trial Chamber I issued its Article 76 Decision (“Sentencing Judgment”) sentencing Mr Ali Muhammad Ali Abd-Al-Rahman (“Mr Abd-Al-Rahman”, “Appellant”) to 20 years’ imprisonment, with deduction of time served in detention since 9 June 2020.

2. Pursuant to Article 81(2) 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 Mr 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: “Sentencing Judgment”, [ICC-02/05-01/20-1281](#), 9 December 2025;
- (c) The Appeal is directed against paragraphs 24-25, 30-39, 44-125, 166, 173, 179, 184, 193, 202, 209, 217, 243, 248, 258, 267, 274, 279 and 293-295 of the Sentencing Judgment;
- (d) The Appeal is filed pursuant to Article 81(2) of the Statute;
- (e) Grounds of appeal: (i) Error of Fact; (ii) Error of Law: a provisional list of the various grounds of appeal is provided below;
- (f) Relief sought: Quashing of the Sentencing Judgment on the application of the principle of non-retroactivity *ratione personae* (Article 24(2) of the Statute); in the alternative, reducing the sentence by taking into account mitigating circumstances in the calculation of sentences for each individual crime pursuant to Article 77(1)(a) of the Statute.

PROVISIONAL LIST OF GROUNDS OF APPEAL

3. The list of grounds of appeal below 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 Sentencing Judgment and after having received full instructions from Mr Abd-Al-Rahman.¹ Any such application will be filed within the time limit set by the Appeals Chamber.

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

5. 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.²

(A) Non-Retroactivity *Ratione Personae* (Article 24(2))

Ground 1 - Error of Law: At paragraphs 30-39 of the Sentencing Judgment, the Trial Chamber erred in law by (i) failing to correctly apply the principle of non-retroactivity *ratione personae* pursuant Article 24(2) of the Statute³ and (ii) limiting the scope of application of Article 24(2) to variations in the national criminal laws,⁴ immediately after having found that national law was not applicable to sentencing.⁵ This resulted in depriving Article 24(2) of the Statute of any *effet utile* with respect to sentencing before the Court, whereas it specifically requires, in the event of a change in the law applicable to a given case, the application of the law that is more favourable to the convicted person. In the present case, the more favourable law applicable was that contained in Article 33(4) of the 1991 Sudanese Penal Code, under which the imprisonment for convicted persons of 70 years and over was unavailable, except for cases of *Hiraba*. This error impacted on the Trial Chamber's finding as to the applicability of sentences of imprisonment under Article 77 of the Statute.

(B) Erroneous limitation of the consideration of mitigating circumstances to the determination of the joint sentence only

Ground 2 – Error of Law: The Trial Chamber erred in law by factoring in mitigating circumstances only at the stage of determining the joint sentence under Article 78(3) of the Statute,⁶ instead of applying mitigation in respect of sentences for each individual crime pursuant to Article 77(1)(a) of the Statute. As a result, the mitigating circumstances could not be applied to reduce the maximum sentence of 20 years' imprisonment for certain individual crimes, because the Trial Chamber had no discretion to apply a lower joint sentence than the highest individual sentence applied to individual crimes. It will be argued that, pursuant to Rule 145(2)(a) of the RPE, the Court must consider mitigating circumstances in its determination of the sentences for each crime. By taking mitigating circumstances into account as part of the determination of the joint sentence only, the Trial Chamber excluded any possibility of a lower

² *Lubanga*, Appeal Judgment, [ICC-01/04-01/06-3121-Red A5](#), para. 34.

³ [ICC-02/05-01/20-1281](#), paras. 33-35.

⁴ [ICC-02/05-01/20-1281](#), para. 37.

⁵ [ICC-02/05-01/20-1281](#), para. 36.

⁶ [ICC-02/05-01/20-1281](#), paras. 293-295.

sentence for individual crimes and, by way of consequence, for a lower joint sentence. The consideration of mitigating circumstances was limited to not passing a joint sentence that was greater than the longest individual sentence of 20 years' imprisonment, instead of potentially reducing individual sentences and, by way of consequence, the overall sentence. This error impacted on the Trial Chamber's determination of individual sentences for each crime,⁷ and by way of consequence, on the *quantum* of the joint sentence which could be no less than the highest, non-reduced, individual sentence. All other grounds below are a direct consequence of **Ground 2**.

Ground 3 – Error of Fact and Law: At paragraphs 44 to 53, the Trial Chamber erred in fact and in law by disregarding the potential health issues detected in the Defence Medical Expert Report, without seeking further verification and without awaiting the outcome thereof. The Trial Chamber found that the Appellant “appears to be in good physical and mental health” without any expert evidence to permit it to arrive at such a conclusion, and despite the Medical Expert's preliminary findings raising potential concern. The Trial Chamber should have deferred sentence until a conclusive finding was reached in relation to the Appellant's health. A fuller understanding of the Appellant's health should have been considered as a mitigating circumstance in the determination of his sentence. In combination with **Ground 2** above, this error impacted on the Trial Chamber's determination of individual sentences for each crime, and by way of consequence, on the *quantum* of the joint sentence.

Ground 4 – Error of Fact: At paragraph 91, the Trial Chamber erred in fact by inferring from the Defence's correction of its submission regarding the Appellant being a “man of peace” that the Defence also withdrew its submissions with respect to the Trial Judgment's finding, at paragraph 680 of the Trial Judgment, that the Appellant was well-known, well-respected in the Wadi Salih before the conflict “*because he was called to mediate in tribal negotiations*”.⁸ The Chamber concluded that it would not address this issue further. The Defence's correction of its submission on the first aspect – “man of peace” – implied no admission in relation to the mitigating impact of the Appellant's being a well-known mediator. The Chamber erred in fact by disregarding that mitigating circumstance. In combination with **Ground 2** above, this error impacted on the Trial Chamber's determination of individual sentences for each crime, and by way of consequence, on the *quantum* of the joint sentence.

⁷ [ICC-02/05-01/20-1281](#), paras. 166, 173, 179, 184, 193, 202, 209, 217, 243, 248, 258, 267, 274 and 279.

⁸ [ICC-02/05-01/20-1240](#), para. 680.

Ground 5 – Error of Law: At paragraphs 95 to 99, the Trial Chamber erred in law by disregarding the role played by the Appellant in promoting peace and reconciliation “in light of the large number and heinous nature of the crimes of which he has been convicted”.⁹ In particular, the Trial Chamber erred in law by refusing to take into account mitigating circumstances because of the gravity of the crimes: irrespective of the gravity of the crimes he has been convicted for, the Appellant’s actions to promote peace and reconciliation over different periods of time, especially after the period of the crimes, should have been taken into account as mitigating factors in the reduction of his sentence. In combination with **Ground 2** above, this error impacted on the Trial Chamber’s determination of individual sentences for each crime, and by way of consequence, on the *quantum* of the joint sentence.

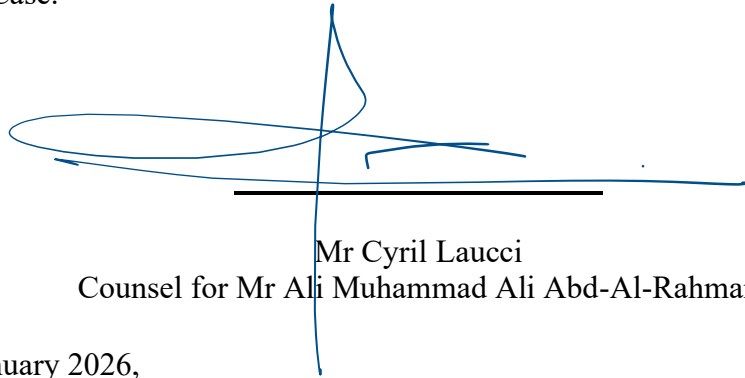
Ground 6 – Error of Law: At paragraphs 100-110, the Trial Chamber erred in law by finding that the Appellant’s action, through his unsworn statements and through his Defence team, to express compassion and promote reparations for victims, could not amount to efforts to compensate victims under Rule 145(2)(a)(ii) of the RPE. The Chamber notably erred in law by asking itself the wrong question as to whether the Appellant’s words were sincere. The correct question would have been whether the words spoken by the Appellant aimed at offering the victims the relief of having the person convicted for the crimes acknowledging that they had been wronged. This in turn had an impact on whether these should be construed as efforts to compensate victims. In combination with **Ground 2** above, this error impacted on the Trial Chamber’s determination of individual sentences for each crime, and by way of consequence, on the *quantum* of the joint sentence.

Ground 7 – Error of Law: At paragraphs 111-118, the Trial Chamber erred in Law by dismissing the Defence’s submissions on the failed defence of mistake of law – Defence Line 3 – as a mitigating factor for the purpose of sentencing. By doing so, the Trial Chamber failed to consider Rule 145(2)(a)(i) of the RPE, according to which circumstances falling short of constituting grounds for exclusion of criminal responsibility may constitute mitigating factors. Instead of considering the Defence’s submissions under this Rule, the Trial Chamber erred in Law by construing these as an attempt to relitigate issues determined in the Trial Judgment. In combination with **Ground 2** above, this error impacted on the Trial Chamber’s determination

⁹ [ICC-02/05-01/20-1281](#), para. 98.

of individual sentences for each crime, and by way of consequence, on the *quantum* of the joint sentence.

THE DEFENCE HEREBY PRAYS THE APPEALS CHAMBER TO ACCEPT NOTICE of the present Sentencing Appeal and **OPEN** appeal proceedings under Article 81(2) of the Statute in the Case.



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

Dated this 8 January 2026,
At The Hague, The Netherlands.