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No.: **ICC-02/05-01/20**

Date: **9 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

Prosecution notice of appeal

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Notice of Appeal

1. The Prosecution gives notice of its appeal against the sentencing judgment of Trial Chamber I in the case of *Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman* (“*Ali Kushayb*”), filing number ICC-02/05-01/20-1281, rendered on 9 December 2025.¹
2. This appeal is brought under article 81(2)(a) of the Rome Statute, rule 150 of the Rules of Procedure and Evidence, and regulation 57 of the Regulations of the Court. It will demonstrate that:
 - (i) the Chamber erred in imposing certain individual sentences, which were disproportionately low, namely those for: murder, other inhumane acts, outrages upon personal dignity, rape, and persecution at Kodoom and Bindisi (counts 2-3, 6-9, 11); for murder and persecution at Mukjar (counts 17-18, 21), and; for murder and persecution at Deleig (counts 27-28, 31), and;
 - (ii) the Chamber erred in imposing the minimum possible joint sentence, which was disproportionately low.
3. Had the Chamber not erred, it would have imposed a joint sentence significantly exceeding 20 years’ imprisonment. The Prosecution recalls that at first instance it recommended to the Chamber that a joint sentence of life imprisonment is justified by the extreme gravity of the crimes and the individual circumstances of the convicted person.
4. The Prosecution has reviewed the Sentencing Judgment carefully with reference to the established standard of appellate review,² and the need to demonstrate that any error resulted in a disproportion between the sentence imposed and the numerous and serious crimes of which Mr Abd-Al-Rahman was convicted.³ On this basis, the Prosecution has identified the following two grounds of appeal.

¹ See [ICC-02/05-01/20-1281-Conf](#) (“Sentencing Judgment (Confidential Version)”); [ICC-02/05-01/20-1281-Red](#) (“Sentencing Judgment”).

² Concerning errors of law, see e.g. [ICC-02/04-01/15-2022-Red A](#) (“*Ongwen* Appeal Judgment”), para. 76; [ICC-02/11-01/15-1400 A](#) (“*Gbagbo* Appeal Judgment”), para. 62; [ICC-01/04-02/06-2666-Red A A2](#) (“*Ntaganda* Appeal Judgment”), para. 36; [ICC-01/05-01/13-2275 A A2 A3 A4 A5](#) (“*Bemba et al.* Appeal Judgment”), para. 90; [ICC-01/05-01/08-3636 A](#) (“*Bemba* Appeal Judgment”), para. 36; [ICC-01/04-02/12-271 A](#) (“*Ngudjolo* Appeal Judgment”), para. 20; [ICC-01/04-01/06-3121 A5](#) (“*Lubanga* Appeal Judgment”), paras. 17-18. Concerning errors of fact, see e.g. [Ongwen Appeal Judgment](#), paras. 77-83; [Gbagbo Appeal Judgment](#), paras. 66-71; [Ntaganda Appeal Judgment](#), paras. 37-42. See also [Bemba et al. Appeal Judgment](#), paras. 91-98; [Ngudjolo Appeal Judgment](#), paras. 22-26; [Lubanga Appeal Judgment](#), paras. 21-27. Concerning abuses of discretion, see e.g. [ICC-01/04-01/06-3122 A4 A6](#) (“*Lubanga* Sentencing Appeal Judgment”), paras. 40-44; [ICC-01/05-01/13-2276-Red A6 A7 A8 A9](#) (“*Bemba et al.* Sentencing Appeal Judgment”), paras. 21-24.

³ See e.g. [Statute](#), arts. 81(2)(a), 83(2). See further [Lubanga Sentencing Appeal Judgment](#), paras. 39, 45.

FIRST GROUND OF APPEAL: THE CHAMBER ERRED IN THE INDIVIDUAL SENTENCES IMPOSED FOR CERTAIN CRIMES AT KODOOM AND BINDISI (COUNTS 2-3, 6-9, 11), MUKJAR (COUNTS 17-18, 21), AND DELEIG (COUNTS 27-28, 31)

5. The Chamber discernibly erred by entering individual sentences for certain crimes that were “so manifestly low and inadequate” that they constituted an abuse of discretion,⁴ in the sense that they exceeded the range of sentences reasonably available in light of the Chamber’s own findings and all the relevant circumstances.⁵ These manifestly inadequate individual sentences related to each of the three distinct operations in which crimes were committed, namely:

- at Kodoom and Bindisi, for the crimes of murder (counts 2-3),⁶ other inhumane acts (count 6),⁷ outrages upon personal dignity (count 7),⁸ rape (counts 8-9),⁹ and persecution (count 11);¹⁰
- at Mukjar, for the crimes of murder (counts 17-18)¹¹ and persecution (count 21),¹² and;
- at Deleig, for the crimes of murder (counts 27-28)¹³ and persecution (count 31).¹⁴

6. The individual sentences entered in these respects constituted an abuse of discretion in light of the Chamber’s own findings on the gravity of these crimes, in particular, the degree of Mr Abd-Al-Rahman’s participation and intent, and the multiple aggravating circumstances.¹⁵

⁴ [Bemba et al. Sentencing Appeal Judgment](#), para. 90.

⁵ See [Bemba et al. Sentencing Appeal Judgment](#), para. 90; [Lubanga Sentencing Appeal Judgment](#), paras. 44, 46. See further e.g. [IRMCT, Prosecutor v. Karadžić, Judgment, MICT-13-55-A, 20 March 2019](#) (“Karadžić Appeal Judgment”), paras. 773-774; [ICTY, Prosecutor v. Dorđević, Judgment, IT-05-87/1-A, 27 January 2014](#), para. 968; [Prosecutor v. Galić, Judgment, IT-98-29-A, 30 November 2006](#), para. 455.

⁶ [Sentencing Judgment](#), para. 173.

⁷ [Sentencing Judgment](#), para. 193.

⁸ [Sentencing Judgment](#), para. 193.

⁹ [Sentencing Judgment](#), para. 202.

¹⁰ [Sentencing Judgment](#), para. 217.

¹¹ [Sentencing Judgment](#), para. 258.

¹² [Sentencing Judgment](#), para. 274.

¹³ [Sentencing Judgment](#), para. 267.

¹⁴ [Sentencing Judgment](#), para. 279.

¹⁵ See [Sentencing Judgment](#), paras. 138-147 (general considerations on the gravity of crimes common to all three operations, and aggravating factors common to all three operations), 148-159 (general considerations on the gravity of crimes in the Kodoom and Bindisi operation, and aggravating factors common to all crimes in this operation), 167-173 (gravity of murder at Kodoom and Bindisi, and aggravating factors), 185-193 (gravity of other inhumane acts and outrages upon personal dignity at Kodoom and Bindisi, and aggravating factors), 194-202 (gravity of rape at Kodoom and Bindisi, and aggravating factors), 210-217 (gravity of persecution at Kodoom and Bindisi, and aggravating factors), 220-233 (general considerations on the gravity of crimes in the Mukjar and Deleig operations, and aggravating factors common to all crimes in these operations), 249-267 (gravity of murder

7. Further supporting the existence of the discernible error alleged above in imposing manifestly inadequate individual sentences for certain crimes, the Chamber also erred in law and/or fact, and/or abused its discretion, and/or provided inadequate reasoning in the Sentencing Judgment, in the following ways:

- Concerning the distinct operations at Mukjar and Deleig, the Chamber erred by imposing identical individual sentences for murder and persecution in the two operations,¹⁶ thereby failing to take account of its own findings and all the relevant circumstances showing that the crimes of murder and persecution at Deleig (counts 27-28, 31) were even graver than those at Mukjar (counts 17-18, 21);¹⁷
- Concerning Mr Abd-Al-Rahman's convictions for persecution in the distinct operations at Mukjar and Deleig (counts 21 and 31), the Chamber erred by entering individual sentences which were lower than the individual sentences for some underlying crimes (such as murder).¹⁸ This contradicted the Chamber's own approach to the individual sentence for persecution in the operation at Kodoom and Bindisi (count 11) where the Chamber entered a higher individual sentence than the individual sentence for any underlying crime.¹⁹

8. The above errors, individually and/or cumulatively, materially affected the Sentencing Judgment.²⁰ Had the Chamber not so erred, it would have entered higher individual sentences than it did for counts 2-3, 6-9, and 11 (Kodoom and Bindisi), counts 17-18, 21 (Mukjar), and counts 27-28, 31 (Deleig).

at Mukjar and Deleig, and aggravating factors), 268-279 (gravity of persecution at Mukjar and Deleig, and aggravating factors). *See also* paras. 126-131 (overall assessment of harm suffered by victims), 132-136 (overall assessment of impact on victims). *See further e.g.* [ICC-02/05-01/20-1240](#) ("Trial Judgment"), paras. 423-425, 429-441, 536-574, 611-612, 617-634, 642-646, 867-870, 885-888, 894-901, 917-927, 931-939, 951-956, 985-986, 991-996, 1002-1011.

¹⁶ [Sentencing Judgment](#), paras. 258, 267.

¹⁷ Concerning the gravity of the killings, *see* [Sentencing Judgment](#), para. 146 ("at least three detainees were killed at Mukjar police station; and no fewer than 50 detainees were executed in the outskirts of Mukjar [...] no fewer than 114 victims were executed in Deleig and its surrounding areas"). *Compare further* [Sentencing Judgment](#), paras. 252-257 (murders at Mukjar), *with* paras. 260-266 (murders at Deleig); [Trial Judgment](#), paras. 536-574, 920, 924-927 (murders at Mukjar), *with* paras. 611-612, 617-634, 641-646, 921, 924-927 (murders at Deleig). Findings concerning the gravity of the killings for the purpose of murder necessarily inform the gravity of persecution based, *inter alia*, on those same murders: *see* [Sentencing Judgment](#), paras. 268-279.

¹⁸ [Sentencing Judgment](#), paras. 274, 279. *Compare e.g.* paras. 258, 267 (individual sentences for murder).

¹⁹ *See* [Sentencing Judgment](#), para. 217. *Compare e.g.* paras. 166, 173, 179, 184, 193, 202, 209 (individual sentences for directing an unlawful attack against the civilian population, murder, pillage, destruction, other inhumane acts, outrages upon personal dignity, rape, and forcible transfer).

²⁰ *See e.g.* [ICC-02/11-01/11-321 OA2](#) ("Gbagbo Jurisdiction Appeal Judgment"), para. 44 (citing [ICC-01/04-169 OA](#) ("DRC Arrest Warrant Appeal Judgment"), para. 84: "A decision is materially affected by an error of law if the Pre-Trial Chamber or Trial Chamber would have rendered a decision that is substantially different from the decision that was affected by the error, if it had not made the error"); [Ngudjolo Appeal Judgment](#), para. 20; [Lubanga Appeal Judgment](#), para. 31. *See also above* fn. 3.

9. Furthermore, these manifestly inadequate individual sentences contributed to the imposition of a joint sentence which was disproportionately low for the numerous and serious crimes of which Mr Abd-Al-Rahman was convicted.²¹ This also materially affected the Chamber’s conclusion under article 77(1)(b) regarding imposition of a life sentence.²² As the Appeals Chamber has previously recalled, “any error in the determination of an individual sentence—even if not the highest one—may, in principle, have an impact on the determination of the joint sentence.”²³

SECOND GROUND OF APPEAL: THE CHAMBER ERRED IN IMPOSING THE MINIMUM POSSIBLE JOINT SENTENCE

10. The Chamber discernibly erred by imposing the minimum possible joint sentence under article 78(3) of the Statute. This sentence was, again, “so manifestly low and inadequate” that it constituted an abuse of discretion.²⁴ It cannot be adequately explained by the mitigating factors identified by the Chamber, which it considered to merit only “limited” weight.²⁵

11. In particular, by determining a joint sentence of 20 years’ imprisonment²⁶—which was equal to the highest individual sentence relating to just *one* of the three operations alone (such as counts 17-18 concerning murder at Mukjar)²⁷—the penalty imposed by the Chamber failed to reflect the *totality* of Mr Abd-Al-Rahman’s culpability for his participation in the numerous and serious crimes committed in all three operations (at Kodoom and Bindisi, Mukjar, and Deleig). This was also reflected in the Chamber’s erroneous conclusion that a sentence of life imprisonment was not justified under article 77(1)(b).²⁸ As the Chamber itself noted, the three operations displayed “an escalation in the gravity of the crimes”.²⁹

12. The imposition of the minimum joint sentence exceeded the range of joint sentences reasonably available in light of the Chamber’s own findings and all the relevant circumstances. It also marked a clear and unexplained departure from the consistent prior sentencing practice of this Court.³⁰ Until now, in all cases where a person was convicted of multiple article 5 crimes

²¹ See [Sentencing Judgment](#), paras. 294.

²² [Sentencing Judgment](#), para. 296.

²³ [Bemba et al. Sentencing Appeal Judgment](#), para. 57.

²⁴ See *above* fn. 5.

²⁵ See *below* fns. 39-41.

²⁶ [Sentencing Judgment](#), para. 294.

²⁷ See e.g. [Sentencing Judgment](#), para. 258. See also para. 267 (determining an individual sentence of 20 years’ imprisonment for counts 27-29 concerning murder at Deleig).

²⁸ [Sentencing Judgment](#), para. 296.

²⁹ [Sentencing Judgment](#), para. 220.

³⁰ Cf. [Karadžić Appeal Judgment](#), para. 767; [Lubanga Sentencing Appeal Judgment](#), paras. 76-77.

based on distinct conduct, the Trial Chamber has never failed to impose a substantial uplift from the minimum joint sentence under article 78(3),³¹ or at least stated its intention to do so but for the statutory limits imposed by article 77(1).³²

13. Further supporting the existence of the discernible error alleged above in imposing a manifestly inadequate joint sentence, the Chamber also erred in law and/or fact, and/or abused its discretion, and/or provided inadequate reasoning in the Sentencing Judgment, in the following ways:

- Despite making findings concerning the factual overlap between certain individual sentences,³³ the Chamber erred by failing to take account of other relevant factors showing that imposition of the minimum joint sentence was inadequate to reflect Mr Abd-Al-Rahman’s culpability in its entirety;³⁴
- Despite accepting that there was no factual overlap between the individual sentences arising from the operation at Kodoom and Bindisi and the operations at Mukjar and Deleig,³⁵ the Chamber erred by failing to reflect this in the joint sentence;³⁶
- In assessing any factual overlap between the operations at Mukjar and Deleig,³⁷ the Chamber erred by failing to take account of relevant factors (such as the different groups of persons victimised, and the distinct contributions made by Mr Abd-Al-Rahman), and consequently failed to reflect the distinct nature of the Mukjar and Deleig operations in the joint sentence;³⁸

³¹ See [ICC-02/04-01/15-1819-Red](#) (“*Ongwen* Sentencing Judgment”), paras. 374-397; [ICC-02/04-01/15-1819-Anx](#) (“*Ongwen* Sentencing Judgment, Partly Dissenting Opinion of Judge Pangalangan”); [ICC-01/14-01/18-2784-Red](#) (“*Yekatom and Ngaïssona* Trial Judgment”), paras. 4651-4662, 4826-4841.

³² See [ICC-01/04-02/06-2442](#) (“*Ntaganda* Sentencing Judgment”), paras. 248-251.

³³ [Sentencing Judgment](#), paras. 158, 164, 172, 182, 185, 190, 194, 198, 206, 216, 233-234, 239 (fn. 586), 249, 290-291. While footnote 586 refers to the “Deleig Operation”, it appears from the context, based on the subject matter of paragraph 239 and the reference to the “Mukjar Operation” at paragraph 291 (fn. 719), that this is a typographical error and the text should instead refer to the “Mukjar Operation”.

³⁴ See [Sentencing Judgment](#), paras. 280-296. Compare e.g. [Ntaganda Sentencing Judgment](#), paras. 248-251; [Ongwen Sentencing Judgment](#), paras. 374-397; [Yekatom and Ngaïssona Trial Judgment](#), paras. 4651-4662, 4826-4841 (considering factors such as: the number of individual sentences, the various geographic locations of the crimes, and the variety of protected values which were infringed by the crimes).

³⁵ See [Sentencing Judgment](#), para. 292 (noting the Prosecution submission “that there is no factual overlap between the three operations” and making a finding with regard to “the operations in Mukjar and Deleig” only).

³⁶ [Sentencing Judgment](#), para. 294.

³⁷ [Sentencing Judgment](#), para. 292 (finding that “whilst the operations in Mukjar and Deleig are charged separately, the gap of time is short, and the crimes show strikingly similar characteristics in nature and intent”).

³⁸ [Sentencing Judgment](#), para. 294.

- Despite correctly directing itself that the three mitigating factors which it identified could only be given “limited” weight,³⁹ and further emphasising that this must not be “undue”,⁴⁰ the Chamber erred in giving excessive weight to those mitigating factors to any extent that they substantially reduced the joint sentence ultimately imposed.⁴¹

14. All the above errors, individually and/or cumulatively, materially affected the Sentencing Judgment.⁴² Had the Chamber not made these errors, it would not have entered a joint sentence which was disproportionately low for the numerous and serious crimes of which Mr Abd-Al-Rahman was convicted. Rather, it would have entered a joint sentence significantly exceeding 20 years’ imprisonment, including potentially of life imprisonment.

RELIEF REQUESTED

15. The Prosecution requests the Appeals Chamber to exercise its powers under article 83(2) of the Statute to confirm the applicable law with respect to the errors outlined in paragraphs 5-14 above, reverse the findings material to the errors identified, and:

- (a) determine an appropriate increase to the individual sentences for the crimes identified in paragraph 5 above, which occurred in the operations at Kodoom and Bindisi, Mukjar and Deleig, namely murder (counts 2-3, 17-18, 27-28), other inhumane acts (count 6), outrages upon personal dignity (count 7), rape (counts 8-9), persecution (counts 11, 21, 31), and in addition and/or in the alternative;
- (b) determine an appropriate increase to the joint sentence significantly exceeding 20 years’ imprisonment, including potentially of life imprisonment.

16. In the alternative, having confirmed the applicable law, and reversed the findings material to the errors identified, the Appeals Chamber should remand the matter to Trial Chamber I with suitable directions for it to: (i) determine an appropriate increase to the individual sentences for the crimes identified in paragraph 5 above, which occurred in the operations at Kodoom and Bindisi, Mukjar and Deleig, namely murder (counts 2-3, 17-18, 27-28), other inhumane acts (count 6), outrages upon personal dignity (count 7), rape (counts 8-9), persecution (counts 11, 21, 31), and in addition and/or in the alternative; (ii) determine an appropriate increase to the

³⁹ [Sentencing Judgment](#), paras. 53, 75, 80.

⁴⁰ [Sentencing Judgment](#), para. 293.

⁴¹ [Sentencing Judgment](#), para. 294.

⁴² *See above* fn. 20.

joint sentence significantly exceeding 20 years' imprisonment, including potentially of life imprisonment.



Nazhat Shameem Khan, Deputy Prosecutor

Dated this 9th day of January 2026

At The Hague, the Netherlands