

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-02/05-01/20**
Date: **14 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 Response to “Defence Application under Regulation 37(2) of the
Regulations of the Court”**

Source: Office of the Prosecutor

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Introduction

1. The Defence requests an extension of 150 pages for its appeal brief against the judgment convicting Mr Abd-Al-Rahman, for a total of 250 pages¹—that is, between two and three times the allocation ordinarily contemplated in the Regulations of the Court for such a filing. The Prosecution opposes this Request, which is excessive. No exceptional circumstances exist justifying a page extension of the length sought. The Prosecution does not object, however, to a more modest extension of approximately 30 pages. Should the Appeals Chamber grant such an extension, the Prosecution further requests a commensurate extension of pages for its response brief.

Submissions

2. Regulation 37(2) provides that the Appeals Chamber may extend page limits in exceptional circumstances. Such determinations will be made on a case-by-case basis, depending on its assessment of all the relevant circumstances.² As such, practice in prior cases may sometimes be instructive but is not dispositive.³

3. The Defence relies on its intention to raise “no less than 79 provisional grounds of appeal” as the basis for its claim of exceptional circumstances, suggesting that this indicates “the extensiveness and complexity of issues raised in this appeal, as well as [...] the broad range of legal, factual and procedural errors that the Defence intends to develop” in its appeal brief.⁴ It suggests that a 150-page extension is justified in light of the Appeals Chamber’s practice in past cases,⁵ and that indeed such an extension is “extremely conservative” because “[a]ny lower limit would simply compel the Defence to give up some of the grounds of appeal it has identified.”⁶ It further asserts that “a lower page limit than the 250 pages requested would not only aggravate the prejudice already caused at trial [...] by the arbitrary limitation of the number of pages for its Final Brief” but “also pre-determine on the merits of Ground of Appeal 21”.⁷

4. While the Prosecution agrees that the complexity and novelty of issues raised on appeal may constitute exceptional circumstances,⁸ justifying a reasonable extension, it notes that such

¹ See [ICC-02/05-01/20-1293 A](#) (“Request”), paras. 1, 6.

² See e.g. [ICC-01/14-01/18-2836 A A2 A3](#) (“*Yekatom and Ngaïssona* Extension Decision”), para. 18.

³ See e.g. [ICC-01/12-01/18-2656 A](#) (“*Al Hassan* Extension Decision”), para. 11.

⁴ [Request](#), para. 2.

⁵ [Request](#), paras. 3-4.

⁶ [Request](#), para. 5.

⁷ [Request](#), para. 5.

⁸ See e.g. [Yekatom and Ngaïssona Extension Decision](#), para. 18.

circumstances are not demonstrated *ipso facto* by the number of grounds of appeal which a party may intend to raise.⁹ Relying on this consideration alone would be formalistic and counter-productive, since it would pertain more to the party's litigation strategy than the objective circumstances of the case. Rather, the Appeals Chamber should take account of *all* the relevant circumstances, which may include the length of the judgment, whether it pertains to criminal responsibility only or also to sentencing, the scope of the alleged crimebase and the mode(s) of alleged criminal responsibility, the number of charges, the number of defendants in the case, the existence of any separate (concurring or dissenting) judicial opinions, and so on.

5. In the present case, notwithstanding the number of grounds of appeal which the Defence may intend to raise, the Prosecution notes that the judgment is 355 pages in length, supplemented by one substantive annex, for a total substantially less than 650 pages.¹⁰ The crimebase pertains to three operations, each carried out over several days within an overall period of less than 8 months,¹¹ and Mr Abd-Al-Rahman was convicted of 27 counts pursuant to two modes of liability.¹² He was tried alone, and the judgment was unanimous. A separate judgment was issued with regard to sentence. The Defence reliance on the permitted length of appeal briefs in other cases is thus of limited utility, since none of them reflected the same combination of circumstances.¹³ Indeed, the judgment in this case is the shortest in recent years, and relatively straightforward.¹⁴ The Defence is also incorrect to assert that other cases, such as *Ongwen* and *Yekatom and Ngaïssona*, did not address "novel issues".¹⁵

6. The Prosecution further observes that reasonable limits on the length of written submissions in proceedings at this Court are not arbitrary. Rather, they promote clear and focused litigation, and thereby facilitate the fair and expeditious hearing of the issues to be resolved at trial and on appeal.¹⁶ Consequently, it cannot be claimed that a chamber's

⁹ *Contra* [Request](#), para. 2.

¹⁰ See e.g. [ICC-02/05-01/20-1240](#) ("Judgment"); [ICC-02/05-01/20-1240-AnxB-Red](#) ("Annex B"). The confidential version of Annex B is somewhat longer than the public redacted version, which is 248 pages.

¹¹ Specifically, the Kodoom and Bindisi operation took place between 15 and 16 August 2003, the Mukjar operation took place between the end of February 2004, and the Deleig operation took place between 5 and 7 March 2004.

¹² See [Judgment](#), para. 1013 (Disposition).

¹³ *Contra* [Request](#), paras. 3-4.

¹⁴ See e.g. [ICC-01/14-01/18-2784-Red](#) ("*Yekatom and Ngaïssona* Trial Judgment") (1616 pages); [ICC-01/12-01/18-2594-Red](#) ("*Al Hassan* Trial Judgment") (822 pages, not counting more than 100 pages of separate judicial opinions); [ICC-02/04-01/15-1762-Red](#) ("*Ongwen* Trial Judgment") (1077 pages).

¹⁵ *Contra* [Request](#), paras. 3-4.

¹⁶ See also e.g. [Statute](#), arts. 64, 67, 83(1).

disposition of requests for an extension of pages—which are, by their nature, “*exceptional*”¹⁷—in any way pre-determines its view on the merits of an issue.¹⁸

7. Having regard to all the factors above, the Prosecution respectfully submits that the circumstances of this case cannot justify an extension of 150 pages to the appeal brief. While the Prosecution accepts that the complexity and novelty of issues raised on appeal may merit some extension,¹⁹ an extension of no more than approximately 30 pages—still almost a 33% extension—is justified.

8. The Prosecution and the Defence agree that, in the circumstances of this appeal, the parties should be permitted to file briefs of the same length given that they will necessarily be addressing the same issues.²⁰ Accordingly, should the Appeals Chamber grant an extension of pages for the Defence appeal brief, the Prosecution requests a commensurate extension for the Prosecution’s response brief.

Conclusion

9. For all the reasons above, the Appeals Chamber should reject the Defence request for an extension of 150 pages to its appeal brief. At most, the Appeals Chamber should grant a more modest extension of approximately 30 pages. Should the Appeals Chamber grant such an extension, it should also grant a commensurate extension for the Prosecution’s brief in response to the Defence appeal.



Nazhat Shameem Khan, Deputy Prosecutor

Dated this 14th day of January 2026

At The Hague, the Netherlands

¹⁷ [Regulations of the Court](#), reg. 37(2) (emphasis added).

¹⁸ *Contra* [Request](#), para. 5.

¹⁹ See also [Request](#), para. 3.

²⁰ See [Request](#), para. 7.