

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-02/05-01/20  
Date: 09 February 2026

## **THE APPEALS CHAMBER**

**Before:** Judge Erdenebalsuren Damdin, Presiding  
Judge Luz del Carmen Ibañez Carranza  
Judge Solomy 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**

**With CONFIDENTIAL *EX PARTE* – Defence, Registry only – Annexes 1 to 5**

**Public Redacted Version of the  
Defence Application pursuant to regulation 62 of the Regulations of the Court  
(ICC-02/05-01/20-1305-Conf, 7 February 2026)**

**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**

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**Registrar**

Mr Zavala Giler, Osvaldo

☒ Counsel Support Section

☐ Victims and Witnesses Unit

☒ Detention Section

☐ Victims Participation and Reparations Section

☒ Other  
Division of Judicial Service Director

1. Pursuant to regulation 62 of the Regulations of the Court, the Defence for Mr Ali Muhammad Ali Abd-Al-Rahman (“Mr Abd-Al-Rahman”, “Appellant”, “Defence”) hereby seeks the authorization of the Honourable Appeals Chamber (“Appeals Chamber”) to submit additional evidence in support of its Appeal A2 against the Article 76 Decision (“Sentencing Judgment”) issued by Trial Chamber I on 9 December 2025.<sup>1</sup> The Defence further provides notice that the submission of the anticipated additional evidence may compel it to seek, against its will, for reasons outside its control, an extension of the current 9 March 2026 time limit for submission, or completion, of its Appeal Brief pursuant to regulation 35 of the RoC. No extension of time is sought at this juncture. Instead, the Defence seeks the urgent intervention of the Appeals Chamber to order the Registry to proceed in a timely manner to avoid further delay.

## CLASSIFICATION

2. Pursuant to Regulation 23*bis*(1) of the RoC, the present application is classified “Confidential”, as it relates to confidential information about the Appellant’s health. A public redacted version will be submitted as soon as possible. Its annexes 1 to 4 are classified Confidential, *ex parte* –Defence, Registry only -.

## BACKGROUND

3. In preparation of sentencing proceedings before the Trial Chamber, the Defence sought and obtained [REDACTED].<sup>2</sup> [REDACTED].

4. The Defence immediately sought an order from the Trial Chamber for the Detention Unit to proceed with the recommended medical examinations.<sup>3</sup> On 27 October 2025, the Registrar submitted that, instead of having ordered the

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<sup>1</sup> Sentencing Judgment, [ICC-02/05-01/20-1281-Conf](#) (Public redacted version (“PRV”): [ICC-02/05-01/20-1281-Red](#)).

<sup>2</sup> [REDACTED].

<sup>3</sup> [ICC-02/05-01/20-1243-Conf](#), PRV: [ICC-02/05-01/20-1243-Red](#).

recommended medical examination forthwith, “the MO [“Medical Officer”] is currently assessing the content of the External Medical Practitioner’s report and the recommendations contained therein. Following this assessment, the MO will follow regulation 157(9) of the RoR [“Regulations of the Registry”] and will inform M. Abd-Al-Rahman of any next step further to the said report and recommendations. [...] The Registry recalls that, pursuant to regulation 155 of the RoR, the MO is the primary physician of M. Abd-Al-Rahman. [...] The planning of medical tests and examinations requires appropriate time, a clear purpose, consideration of the host State’s available services and waiting lists, and reasoning is discussed directly between doctor and patient”.<sup>4</sup>

5. In the absence of progress on this matter, the Defence applied, on 29 October 2025, for an extension of the time limit for the submission of its Sentencing Brief.<sup>5</sup>

6. This application was denied by email by Trial Chamber I on 30 October 2025. As part of its reasoning, the Trial Chamber found: “The Medical Officer has not deemed it necessary to carry out further testing or evaluation so far.”<sup>6</sup>

7. On 31 October 2025, the Medical Officer determined that there was currently no reason to [REDACTED].<sup>7</sup>

8. On 14 November 2025, the Defence requested a second opinion from another physician.<sup>8</sup> This request was approved on 20 November 2025.<sup>9</sup>

9. On 15 January 2026, the Defence was informed by the Appellant that the Expert [REDACTED] appointed by the Court had delivered her report (“the Second Report”).

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<sup>4</sup> [ICC-02/05-01/20-1247-Conf](#), PRV: [ICC-02/05-01/20-1247-Red](#), paras. 16-17.

<sup>5</sup> [ICC-02/05-01/20-1252-Conf](#), PRV: [ICC-02/05-01/20-1252-Red](#).

<sup>6</sup> [REDACTED].

<sup>7</sup> [REDACTED].

<sup>8</sup> [REDACTED].

<sup>9</sup> [REDACTED].

The Defence wrote on the same day to the Detention Unit, asking for the Second Report to be forwarded.<sup>10</sup> This email was left unanswered by the Registry.

10. On 3 February 2026, the Defence received from the Appellant a hard copy of a redacted version of the English translation of the Second Report.<sup>11</sup> The Second Report confirms the diagnosis of the Defence Expert [REDACTED].<sup>12</sup> The Appellant informed the Defence that he had not undergone the recommended [REDACTED] session yet, and had not been informed that such a session was scheduled

11. The Defence immediately wrote to the Detention Unit to enquire about the [REDACTED] session and to insist on the urgency of processing it, so that its result could be known before the submission of the Defence Sentence Appeal Brief.<sup>13</sup> The Detention Unit's reply essentially refuses to answer the Defence's query on the ground of purported medical confidentiality.<sup>14</sup> The Defence rejected the validity of that response, recalling that the Appellant had, on repeated occasions, waived medical privilege and had consented to medical reports and communications being copied to his Defence, and insisted once again on the impact of the delays on the appeal proceedings incurred by the Registry's lack of cooperativeness.<sup>15</sup>

12. After a phone call with the Appellant, the Defence wrote again to confirm the Appellant's waiver of his right to medical confidentiality on all issues related to the Second Report and his consent to undergo the [REDACTED] session previously communicated to the Medical Officer on Friday, 30 January 2026. The Defence further informed the Detention Unit that the Appellant would refuse, from now on, to be

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<sup>10</sup> [REDACTED].

<sup>11</sup> Confidential *ex parte* – Registry, Defence only – Annex 1: [REDACTED].

<sup>12</sup> Confidential *ex parte* – Registry, Defence only – Annex 1: [REDACTED].

<sup>13</sup> Confidential *ex parte* – Registry, Defence only – Annex 2: [REDACTED].

<sup>14</sup> Confidential *ex parte* – Registry, Defence only – Annex 2: [REDACTED].

<sup>15</sup> Confidential *ex parte* – Registry, Defence only – Annex 2: [REDACTED].

treated by the Medical Officer and asked that she be replaced. The Defence committed to submit again signed waivers the following day.<sup>16</sup>

13. On 4 February 2026, the Defence submitted the Appellant's signed reiteration of his waiver of his right to medical confidentiality for all issues in relation to the Second Report and follow-up [REDACTED] session and signed a request to have the Medical Officer replaced.<sup>17</sup> The Detention Unit answered by sending an inflammatory email suggesting – wrongly – that the Defence was taking action on behalf of the Appellant regarding medical matters, and dismissing the Defence's legitimate and urgent requests as moved by the Lead Counsel's being "*frustrated*" and not addressed in a professional and respectful manner. No confirmation was provided that the [REDACTED] session will take place. The Medical Officer is confirmed as the Medical Officer of the Detention Centre and the waiver of the right to medical confidentiality was ignored – wrongly – on the ground that "*this is a matter between the doctor and patient*".<sup>18</sup>

14. This left the Defence with no solution other than seeking the Registrar's urgent intervention. This was done by way of a letter of the same date,<sup>19</sup> which was submitted at 13h58.<sup>20</sup> In the letter, the Defence insisted on the need to intervene urgently to order the [REDACTED] session to take place and its result to be communicated to the Defence before 9 March 2026. The Defence indicated that it was preparing the present submission to the Appeals Chamber and would need an urgent answer by close of business 5 February 2026 in order to be able to include it in its filing.

15. In the absence of answer from the Registrar, the urgency of the situation gives no room for further waiting.

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<sup>16</sup> Confidential *ex parte* – Registry, Defence only – Annex 2: [REDACTED].

<sup>17</sup> Confidential *ex parte* – Registry, Defence only – Annex 2: [REDACTED].

<sup>18</sup> Confidential *ex parte* – Registry, Defence only – Annex 2: [REDACTED].

<sup>19</sup> Confidential *ex parte* – Registry, Defence only – Annex 3: Letter to Registrar.

<sup>20</sup> [REDACTED].

## SUBMISSIONS

16. The [REDACTED] session was first recommended by the Defence Expert, an experienced [REDACTED], on 17 October 2025.<sup>21</sup> The only reason why it did not take place is because the Medical Officer of the Detention Centre, a General Practitioner with no expertise (as far as the Defence is aware) in [REDACTED], unreasonably took the view that that there was no need to undertake it.<sup>22</sup> This opinion prevented the recommended [REDACTED] session from taking place and compelled the Defence to ask for a second opinion.<sup>23</sup> The Registry took two-and-a-half months to have the second opinion approved, (one week),<sup>24</sup> have the Court expert identified and appointed, have the Court expert visit the Appellant (15 December 2025),<sup>25</sup> have the Court expert issuing the Second Report, have the report translated in English and eventually have it transmitted by the Appellant to his Defence (3 February 2026). These delays were protracted as a result of the Registry's persistent refusal to take the Appellant's repeated waivers of medical confidentiality *vis-à-vis* his Defence into account: the Defence could and should have received the Second Report by 15 January 2026,<sup>26</sup> instead of 3 February.

17. The Medical Officer is a [REDACTED]. As such, she is bound by the rules governing medical deontology in [REDACTED].<sup>27</sup> [REDACTED] of that Code relevantly provides as follows: [REDACTED].<sup>28</sup> As a General Practitioner, the Medical Officer had no competence, no knowledge, no expertise. No authority to come over the Defence Forensic Expert and recommend against his conclusions. By doing so in her

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<sup>21</sup> [ICC-02/05-01/20-1243-Conf-Anx5](#).

<sup>22</sup> [ICC-02/05-01/20-1264-Conf-AnxA](#).

<sup>23</sup> [REDACTED].

<sup>24</sup> [REDACTED].

<sup>25</sup> Confidential *ex parte* – Registry, Defence only – Annex 1: [REDACTED].

<sup>26</sup> [REDACTED].

<sup>27</sup> [REDACTED].

<sup>28</sup> [REDACTED].

letter of 30 October 2025, she breached her own Code of Deontology and may incur disciplinary action.

18. Regulation 156 of the Regulations of the Registry (“RoR”) protects medical confidentiality. Regulation 156(2) specifically provides: “*The medical record of a detained person shall not be consulted by any person other than the medical officer [...] without the express written consent of the detained person concerned*” (emphasis added). It clearly results from this provision that the Appellant has authority to waive the right to confidentiality of information in his medical record *vis-à-vis* his Defence and that, when he does so, the Registry has no authority to refuse it. The Appellant had signed and submitted written waivers of medical confidentiality towards his Defence on all matters related to his health and healthcare in detention, in particular with respect to the issues covered in the Defence Expert Report and Second Report on multiple occasions, including on 10 November 2025<sup>29</sup> and on 4 February 2026.<sup>30</sup> These waivers were systematically and unreasonably ignored by the Registry, which persisted in refusing to share medical information with the Defence. This persistent refusal despite repeated written express and signed waivers is in breach of regulation 156(2) of the RoR.

19. What matters for the present proceedings is that this unwelcome intervention from the Medical Officer in breach of Article 8 of her Code of Conduct delayed the completion of the required [REDACTED] session by months, since 17 October 2025. This delay was further aggravated by the Registry’s persistent refusal to take into account the Appellant’s repeated waivers of his right to medical confidentiality *vis-à-vis* his Defence for all matters related to [REDACTED], in breach of regulation 156(2) of the RoR and, even worse, the Registry’s unjustifiable delay in scheduling the twice recommended [REDACTED] session for the Appellant. At the time of submitting the present application, these delays are ongoing, with no confirmation from the Registry

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<sup>29</sup> Confidential *ex parte* – Registry, Defence only – Annex 4: [REDACTED].

<sup>30</sup> Confidential *ex parte* – Registry, Defence only – Annex 5: [REDACTED].

as to when the recommended neuroimaging will take place and when its results will be communicated to the Defence.

20. The impact of the Medical Officer's breach of her Code of Conduct and of the Registry's persistent breach of regulation 156(2) of the RoR on the proceedings is considerable.

21. Its impact is partially addressed under **Ground of Appeal 3** of the Defence Notice of Appeal A2.<sup>31</sup> It will be further developed in the Defence's forthcoming Appeal Brief A2, to be submitted on 9 March 2026.

22. Its impact does not stop there and is ongoing. The Second Report confirmed that the Defence Expert's recommendation to undertake a [REDACTED] session was justified.<sup>32</sup> But for the Medical Officer's unreasonable refusal to order the [REDACTED] session, it would have taken place soon after it was recommended on 17 November 2025 and its result may well have been available to the Trial Chamber for its deliberations on sentencing.

23. The Registry's unjustifiable delays in transmitting the Second Report to the Defence and in moving forward with the recommended [REDACTED] session mean that the Defence does not yet know when (or indeed if) the [REDACTED] session will take place and when it will receive its results. The Defence needs to receive these results in order to finalise its Sentence Appeal Brief submissions on **Ground of Appeal 3**. These cannot be finalised without this information. Once the results are received, the Defence may still need to receive further expert advice on their interpretation.

24. Since 17 October 2025, more than three-and-a-half months have been wasted as a result of the Medical Officer's unreasonable decision and of the Registry's ongoing violation of Regulation 156(2) of the RoR and failure to take timely action to schedule the recommended neuroimaging session. The Defence notes with concern that the

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<sup>31</sup> [ICC-02/05-01/20-1290](#): **Ground of Appeal 3**.

<sup>32</sup> Confidential *ex parte* – Registry, Defence only – Annex 1: [REDACTED].

Registry's earlier submission that *"the planning of medical tests and examinations requires appropriate time, a clear purpose, consideration of the host State's available services and waiting lists, and reasoning is discussed directly between doctor and patient"*.<sup>33</sup> The Defence is now facing a real possibility that the results of the [REDACTED] session will not be available, communicated to the Defence and fully interpreted by way of further expert advice, if needed, by the date when the Defence is required to submit its Sentence Appeal Brief, on 9 March 2026. If that is so, the Defence may have no choice other than seeking a limited extension of the time limit for submission of its Appeal Brief A2, until such date as when it will be in possession of all relevant information to complete its submissions under **Ground of Appeal 3**. The Defence had no intention to seek an extension of time. It is well advanced in the drafting of its Appeal Brief in view of its timely submission. The Defence is concerned with the impact that such extension, if required, may have on the timely resolution of the Appellant's Appeal and his right to be tried without undue delay under Article 67(1)(c) of the Statute.

25. All efforts and urgent messages sent to the Detention Unit and to the Registrar have been dismissed or ignored. The resolution of this situation now calls for the urgent intervention of the Appeals Chamber in order to avoid, or minimize, the delays caused in the resolution of the Appellant's appeal.

### ADMISSION OF ADDITIONAL EVIDENCE

26. Pursuant to regulation 62(1) of the RoC, the Defence hereby seeks the Appeals Chamber's authorization to present the following documents into evidence:

(i) [REDACTED];<sup>34</sup>

(ii) [REDACTED];<sup>35</sup>

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<sup>33</sup> [ICC-02/05-01/20-1247-Conf](#), PRV: [ICC-02/05-01/20-1247-Red](#), paras. 16-17.

<sup>34</sup> [REDACTED].

<sup>35</sup> Confidential *ex parte* – Registry, Defence only – Annex 4.

(iii) [REDACTED];<sup>36</sup>

(iv) [REDACTED];<sup>37</sup>

(v) The letter addressed by the Defence to the Registrar on 4 February 2026;<sup>38</sup>

(vi) [REDACTED].<sup>39</sup>

27. All the above documents are posterior to the Trial Chamber's decision on presentation of additional sentencing evidence, issued by email on 30 October 2025.<sup>40</sup> They thus could not be adduced before the Trial Chamber.

28. All the above documents are material to the Defence's submissions under **Ground of Appeal 3**, as proof of the error of fact and law which resulted in the Trial Chamber issuing the Sentencing Judgment without having received full information on the Appellant's mental health and of the direct responsibility of the Registry in preventing this information from being made available to the Defence for its sentencing submissions, including on appeal.

29. The Defence respectfully gives notice that it may need to submit the following additional evidence, once obtained:

(vii) [REDACTED];

(viii) The Registrar's answer to the Defence letter of 4 February 2026, if any;

(ix) Any evidence of further dilatory action on behalf of the Medical Officer and/or the Registry impacting on the completion of the [REDACTED] session and/or the transmission of its result to the Defence.

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<sup>36</sup> Confidential *ex parte* – Registry, Defence only – Annex 1. [REDACTED].

<sup>37</sup> Confidential *ex parte* – Registry, Defence only – Annex 2.

<sup>38</sup> Confidential *ex parte* – Registry, Defence only – Annex 3.

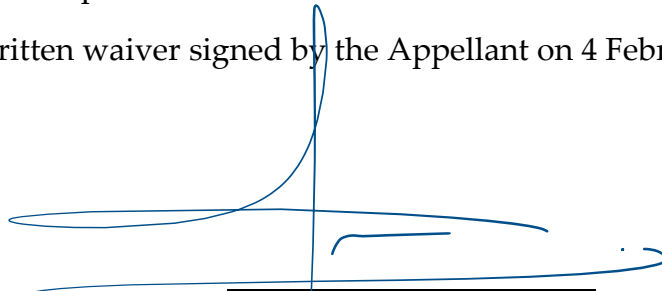
<sup>39</sup> Confidential *ex parte* – Registry, Defence only – Annex 5.

<sup>40</sup> Email from Trial Chamber I to the Parties, 30 October 2025, 11h16.

30. Another application may be submitted in due course for admission of the above additional evidence pursuant to regulation 62(1) of the RoC.

#### **URGENT INTERVENTION OF THE APPEALS CHAMBER**

31. Finally, the Defence prays the Appeals Chamber to order the Registry to proceed without delay with the required [REDACTED] session, to keep the Defence updated of when it will take place, and to transmit its result to the Defence without delay on the basis of the written waiver signed by the Appellant on 4 February 2026.<sup>41</sup>



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

Dated this 09 February 2026

At The Hague, The Netherlands.

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<sup>41</sup> Confidential *ex parte* – Registry, Defence only – Annex 5.