

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **1 July 2026**

TRIAL CHAMBER I

Before: Judge Joanna Korner, Presiding Judge
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge Althea Violet Alexis-Windsor

SITUATION IN DARFUR, SUDAN

**IN THE CASE OF
THE PROSECUTOR *v.*
ALI MUHAMMAD ALI ABD-AL-RAHMAN (“ALI KUSHAYB”)**

Public

Public redacted version of “Prosecution’s Response to ‘Submissions on the Detention Centre Medical Officer Report, and Request for Witness Summons’”, 12 November 2025, ICC-02/05-01/20-1266-Conf

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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☒ Legal Representatives of the Victims

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(Participation/Reparation)

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A. INTRODUCTION

1. The Chamber should reject the Defence's request to authorise the Medical Officer's ("MO") appearance at the sentencing proceedings and to issue a witness summons to ensure the MO's appearance ("Request").¹ The Defence has failed to demonstrate any legitimate legal basis or forensic purpose to substantiate the Request. The Prosecution does not oppose the Defence's request to submit the Detention Centre Medical Officer's Report ("MO Report").²

B. CLASSIFICATION

2. This filing is classified as confidential in accordance with regulation 23*bis*(2) of the Regulations of the Court since it responds to a request of the same classification.

C. SUBMISSIONS

3. The Prosecution does not object to the submission of the MO Report into evidence. However, the Prosecution submits the appearance of the MO before the Chamber is not justified and the submission into evidence of the MO Report is not relevant to the Chamber's ultimate determination of the appropriate sentence in this matter. Moreover, the MO has properly exercised her discretion in determining that [REDACTED], in accordance with the Regulations of the Registry ("RoR"). Therefore, the Request should be rejected.

4. As submitted by the Registry,³ pursuant to regulation 155 of the RoR, the ICC Detention Centre MO "shall have responsibility for the physical and mental health of detained persons", and that "decisions of a medical nature may only be taken by the medical officer or other medical staff designated by him or her".⁴

5. Further regulation 157(9) of the RoR is clear that the MO may refuse to administer treatment or medication recommended by an external medical practitioner if, in the opinion of the MO, its effect will be detrimental to the welfare of the detained person.⁵ [REDACTED].⁶

6. The MO Report records that [REDACTED].⁷

¹ Defence's Submission of Detention Centre Medical Officer Report and Request for Witness Summons, ICC-02/05-01/20-1264-Conf.

² Defence's Submission of Detention Centre Medical Officer Report and Request for Witness Summons, ICC-02/05-01/20-1264-Conf, Annex A.

³ Registry's Observations on "Defence Request to Present Additional Evidence for Sentencing", ICC-02/05-01/20-1247-Conf, para. 12.

⁴ Regulation 155(1) and (2) of the Regulations of the Registry.

⁵ Regulation 157(9) of the Regulations of the Registry.

⁶ [REDACTED].

⁷ Defence's Submission of Detention Centre Medical Officer Report and Request for Witness Summons, ICC-02/05-01/20-1264-Conf, Annex A.

7. Further, the MO Report indicates that [REDACTED].⁸ [REDACTED].⁹ [REDACTED].¹⁰

8. Although the Defence does not accept the correctness of the opinion formed by the MO,¹¹ the Prosecution submits that compelling the MO to appear before the Chamber for questioning is not an appropriate remedy in these circumstances. The purpose of the sentencing hearing is for the Chamber to hear evidence and submissions relevant to determining the sentence.¹²

9. There is currently no evidence before the Chamber on which it could be satisfied on the balance of probabilities that [REDACTED],¹³ [REDACTED].¹⁴

10. [REDACTED].

11. In particular the Prosecution observes the following [REDACTED]:

- i. [REDACTED];
- ii. [REDACTED];
- iii. [REDACTED];
- iv. [REDACTED];
- v. [REDACTED]; and
- vi. [REDACTED].

12. The Prosecution acknowledges that [REDACTED].

13. Although the Defence sentencing submissions appropriately acknowledge that [REDACTED].¹⁵ [REDACTED].¹⁶ [REDACTED].

14. Accordingly, contrary to the Defence's submission, [REDACTED]. Mr Abd-Al-Rahman's is 76 years old. In accordance with rule 145(1)(c), his age is one factor, among many, that the Chamber will need to consider when imposing sentence. Although the evidence does

⁸ Defence's Submission of Detention Centre Medical Officer Report and Request for Witness Summons, ICC-02/05-01/20-1264-Conf, Annex A.

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ Submission of Detention Centre Medical Officer Report and Request for Witness Summons, ICC-02/05-01/20-1264-Conf, para. 21.

¹² Decision on the sentencing procedure, ICC-02/05-01/20-1241, para. 2.

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

not establish that Mr Abd-Al-Rahman currently has any particular serious medical condition the Prosecution accepts that may change as he ages. The Prosecution submits that is an entirely predictable consequence of his offending, is partly of his own making in circumstances where he did not voluntarily surrender until 13 years after the first arrest warrant was issued, and that the Chamber would proceed on the basis that any medical conditions that develop following Mr Abd-Al-Rahman's sentence will be appropriately treated and managed in the custodial setting. The Prosecution submits that Mr Abd-Al-Rahman's age is not itself mitigating and that the prospect of an eventual decline in his health is a matter to which the Chamber would not afford any weight in light of the nature of the crimes for which he has been convicted.

15. In the absence of evidence on which the Chamber could be satisfied on the balance of probabilities that [REDACTED]. The appearance of the MO before the Chamber during the sentencing hearing is therefore unnecessary and unjustified. Further, the Defence have not demonstrated that the MO would not appear if directed to by the Chamber and therefore the request for the Chamber to issue a summons is both unnecessary and unreasonable in the circumstances.

16. To the extent the Defence assert that the opinion of the MO was unreasonably formed in so far as they do not agree with the opinions expressed by [REDACTED],¹⁷ the Prosecution notes that it holds serious concerns in regards to the methodology employed and the conclusions reached in [REDACTED] Expert Report and does not accept that an opinion formed by a medical practitioner would be inherently unreasonable merely because they reached a different conclusion to [REDACTED].

17. Finally, the Prosecution notes that the deadline for the request to present additional evidence for sentencing has expired. The Defence has not shown good cause for an extension of time, nor that it was unable to file the application before the lapse of the time limit for reasons outside its control, as required by regulation 35(2). Moreover, although the Defence seemingly foreshadow the filing of additional written submissions following the oral submissions,¹⁸ presumably following a formal application, the Prosecution submits that the Defence have not established a proper basis to depart from the Chamber's ruling that no subsequent written or oral submissions will be allowed after the hearing.¹⁹

¹⁷ Submission of Detention Centre Medical Officer Report and Request for Witness Summons, ICC-02/05-01/20-1264-Conf, para. 19.

¹⁸ Submission of Detention Centre Medical Officer Report and Request for Witness Summons, ICC-02/05-01/20-1264-Conf, para. 20.

¹⁹ Decision on the sentencing procedure, ICC-02/05-01/20-1241, para. 8.

D. CONCLUSION

18. For the foregoing reasons, the Request for a summons and appearance of the MO at the sentencing hearing should be rejected.



Nazhat Shameem Khan

Deputy Prosecutor

Dated this 1st day of July 2026

At The Hague, The Netherlands