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In contrast to article 81, which deals with appeals at the end of the trial, article 82 mostly deals with appeals which occur while pre-trial or trial proceedings are *ongoing*. These are sometimes known as *interlocutory* appeals. Article 82 describes five kinds of interlocutory appeals which are permitted. The Appeals Chamber has stressed in case law that it will not hear appeals which are not recognised in the Statute.

As well as the five kinds of interlocutory appeals, article 82 also permits a special kind of appeal against the order for reparations, which occurs when the trial, and any article 81 appeals, are fully complete.

We will look at all these appeals in turn.

First, let's consider the interlocutory appeals. It may seem a bit unusual for an issue to go up to the Appeals Chamber while the pre-trial and trial proceedings have not yet been completed. However, this procedure is also familiar to national legal systems and, when used correctly, helps to make sure that the trial proceeds on the correct path. It may also have the effect of terminating cases which, for technical reasons, should not be allowed to go forward.

As a general rule, interlocutory appeals do not stop the pre-trial or trial proceedings from carrying on while the appeal is decided. This is expressly stated by article 82(3). However, the Appeals Chamber may stop proceedings, and grant what is called "suspensive effect". It will do this based on its view of the particular circumstances, and may issue such an order if the continued proceedings would defeat the purpose of the appeal, or create a situation which would be very difficult to reverse once the appeal has been decided.

Sometimes, a Pre-Trial or Trial Chamber may also decide to stop its own proceedings temporarily, to give the Appeals Chamber a chance to decide whether or not to order suspensive effect.

Now, as we've already said, there are five kinds of interlocutory appeals. Most of them can only be filed by the Parties in the case - in other words, the Prosecutor or the Defence. If any other

person is allowed to file an appeal, such as the “concerned State” mentioned in article 82(2), then this is usually said to be stated expressly. In practice, however, some provisions such as article 82(1)(d) also permit states to appeal on decisions which particularly affect them such as matters pertaining to state cooperation.

Article 82(1)(a) states that any decision with respect to “jurisdiction or admissibility” may be appealed. This recognises the essential importance of these questions to the ICC. If the Court does not have jurisdiction on a matter, then that matter should never have been part of the proceedings in the first place, and for this reason the appeal should be decided as soon as possible. This situation might arise for example if the Court is attempting to prosecute a crime which is not within the Statute, or if the Court is attempting to prosecute a person who is not covered by article 12. Likewise, if a case is inadmissible, in the sense of article 17, the Court is not the right forum for the case and again the proceedings should stop.

Decisions concerning jurisdiction or admissibility will usually arise from proceedings under articles 18 or 19 of the Statute, and they should occur relatively early in the course of the trial. As a general rule, they should be complete by the time that the trial starts. However, as the *Ntaganda* case has recently demonstrated, it is possible for jurisdictional disputes to continue for a long time, carrying on until the trial is almost halfway through.

There is no hard and fast rule as to which decisions concern jurisdiction or admissibility, and the Appeals Chamber will consider on a case by case basis whether article 82(1)(a) applies. A party has sought to appeal on the basis of article 82(1)(a), and the Appeals Chamber determines that the decision does not concern jurisdiction or admissibility, then that appeal will be dismissed immediately.

The next kind of interlocutory appeal is article 82(1)(b). This states that a decision granting or denying release of the suspect or accused person may be appealed. This again makes sense, given the fundamental importance of the right to liberty. Indeed, under article 21(3), the Court is obliged to act consistently with internationally recognised human rights. Generally speaking, the decisions which lead to article 82(1)(b) appeals are almost always taken under article 60(2) or 60(3). These provisions require that, if a person is remanded in custody, they are entitled to continuing periodic review of the necessity of their detention. The frequency of this review means that, in some past cases, the Appeals Chamber has still been considering the merits of previous appeals under article 82(1)(b) while the Pre-Trial Chamber has been taking new decisions under article 60(3). It seems likely, therefore, that measures may be taken by the Court to try and improve the speed with which these types of appeals are resolved.

Article 82(1)(c) permits a rare kind of appeal - when a Pre-Trial Chamber decides of its own motion to take measures in relation to a unique investigative opportunity. This is a special procedure established under article 56, designed to preserve evidence which may otherwise be lost. Ordinarily, because the Prosecutor has control of the ICC’s investigations, she will request the assistance of the Pre-Trial Chamber when she requires. But article 56 does allow the Chamber to take such measures independently if it considers the evidence in question may be “essential for the defence at trial”. In order to make sure this power is used properly, however, the Prosecutor alone is entitled to appeal such decisions by the Pre-Trial Chamber. Article 56(3)(b) further requires that any such appeal is heard on an expedited basis. So far, this procedure has never been used.

Article 82(1)(d) is perhaps the most common kind of interlocutory appeal because it can apply to any kind of pre-trial or trial decision - provided that the Party who wishes to appeal can

convince the Pre-Trial or Trial Chamber to give its permission for the appeal to be made. This is also sometimes called an appeal with ‘certification’ or with leave to appeal.

Article 82(1)(d) sets out quite a complicated test for this process. A decision may only be certified for appeal if it involves an issue which significantly affects the fair and expeditious conduct of the trial, or the outcome of the trial, and the immediate intervention of the Appeals Chamber will materially advance the proceedings. In other words, this test is meant to ensure that appeals of this kind are relatively unusual - and are confined only to issues which have a big enough impact on the ongoing proceedings to justify appealing them now, rather than at the end of the trial. Unlike articles 82(1)(a) to article 82(1)(c), article 82(1)(d) places control in the hands of the Judges whose decision is potentially subject to appeal. As a result, although the Parties may sometimes spend considerable effort in making applications under article 82(1) (d), they will not, do not, always succeed even before they get the appeals chamber.

The final kind of interlocutory appeal, which is provided for in article 82(2), has also not yet been used. This allows for an appeal where the Pre-Trial Chamber has granted or denied a request by the Prosecutor, under article 57(3)(d), to take specific investigative steps on the territory of a State Party *without* using the cooperation procedures in Part 9 of the Statute. This appeal can be made either by the Prosecutor or the State concerned - but, a bit like article 82(1)(d), requires the permission of the Pre-Trial Chamber. The basis upon which the Pre-Trial Chamber will decide to grant permission, or not, is not yet clear. But it is not surprising that the Statute makes special provision to allow this procedure to be appealed, given the importance which it generally attributes to working in cooperation with States.

Last, but not least, article 82 also allows for an appeal which is not an interlocutory appeal at all. This is an appeal against an order for reparations, issued under article 75 of the Statute. Article 75 is a key innovation in the Statute, intended to ensure that the ICC plays a role in helping to improve the situation of victims of crimes. In this context, it is hardly surprising that article 82(4) allows the legal representatives of victims and the convicted person - as well as *bona fide* owners of property which may be affected by an order for reparations - to appeal reparation orders.

The absence of the Prosecutor from this list illustrates that, in the reparation phase of proceedings, the focus shifts to the victims and the convicted person. Reparations proceedings are now well under way in the *Lubanga*, *Katanga*, and *Bemba* cases. It is thus highly likely that this will become an important part of the ICC’s appellate practice in the future.