



**Original: English**

**No. ICC-02/05-01/20 OA3  
Date: 4 September 2020**

**THE APPEALS CHAMBER**

**Before:**  
**Judge Piotr Hofmański, Presiding**  
**Judge Chile Eboe-Osuji**  
**Judge Howard Morrison**  
**Judge Luz del Carmen Ibáñez Carranza**  
**Judge Solomy Balungi Bossa**

**SITUATION IN DARFUR, SUDAN**

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

**Public document**

**Decision on the admissibility of the appeal**

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

**The Office of the Prosecutor**  
Ms Fatou Bensouda, Prosecutor  
Ms Helen Brady

**Counsel for the Defence**  
Mr Cyril Laucci

**REGISTRY**

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**Registrar**  
Mr Peter Lewis

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Ali Muhammad Ali Abd-Al-Rahman against the decision of Pre-Trial Chamber II entitled ‘Decision on the Defence request and observations on reparations pursuant to article 75(1) of the Rome Statute’ of 18 August 2020 (ICC-02/05-01/20-117), in which it is submitted that the impugned decision is a decision with respect to jurisdiction within the meaning of article 82(1)(a) of the Statute,

Having before it the ‘Request to Dismiss *In Limine* the “*Acte d’appel de la «Decision on the Defence Request and Observations on Reparations pursuant to Article 75-1 of the Rome Statute» (ICC-02/05-01/20-117)”*’ of 27 August 2020 (ICC-02/05-01/20-137),

*Renders* unanimously the following

## DECISION

The above-mentioned appeal is dismissed as inadmissible.

## REASONS

### I. PROCEDURAL HISTORY

1. On 18 August 2020, the Single Judge on behalf of Pre-Trial Chamber II (the ‘Pre-Trial Chamber’) issued the ‘Decision on the Defence request and observations on reparations pursuant to article 75(1) of the Rome Statute’ (the ‘Impugned Decision’).<sup>1</sup>
2. On 24 August 2020, Mr Abd-Al-Rahman filed a notice of appeal, arguing that the Impugned Decision is a decision with respect to jurisdiction subject to direct appeal under article 82(1)(a) of the Statute.<sup>2</sup>
3. On 25 August 2020, the Appeals Chamber invited the Prosecutor and Mr Abd-Al-Rahman to file submissions addressing the admissibility of the appeal.<sup>3</sup>

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<sup>1</sup> [ICC-02/05-01/20-117](#).

<sup>2</sup> [Acte d’appel de la « Decision on the Defence Request and Observations on Reparations pursuant to Article 75-1 of the Rome Statute » \(ICC-02/05-01/20-117\)](#), ICC-02/05-01/20-128.

4. On 27 August 2020, the Prosecutor requested that the appeal be dismissed *in limine* as inadmissible under article 82(1)(a) of the Statute.<sup>4</sup> The Prosecutor argues that the Impugned Decision is not ‘a ruling on the jurisdiction of the Court’ and underlines that it was not based on ‘whether the Court was permitted to establish principles on reparations, but simply [on] whether the procedural conditions were *currently* satisfied for this to occur’.<sup>5</sup>

5. On 2 September 2020, Mr Abd-Al-Rahman filed his submissions on the admissibility of the appeal, arguing that the Appeals Chamber has previously broadly defined the notion of ‘jurisdiction’ to encompass competence to deal with a matter under the Statute.<sup>6</sup> In his view, a chamber’s determination on its own jurisdiction constitutes a decision with respect to jurisdiction, which may be appealed under article 82(1)(a) of the Statute.<sup>7</sup>

## II. MERITS

6. Article 82(1)(a) of the Statute provides, in relevant part, that ‘either party may appeal’ a ‘decision with respect to jurisdiction’. The Appeals Chamber recalls that, in the ‘Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19 (2) (a) of the Statute of 3 October 2006’, it held:

The jurisdiction of the Court is defined by the Statute. The notion of jurisdiction has four different facets: subject-matter jurisdiction also identified by the Latin maxim jurisdiction *ratione materiae*, jurisdiction over persons, symbolized by the Latin maxim jurisdiction *ratione personae*, territorial jurisdiction - jurisdiction *ratione loci* - and lastly jurisdiction *ratione temporis*. These facets find expression in the Statute.

The jurisdiction of the Court is laid down in the Statute: Article 5 specifies the subject-matter of the jurisdiction of the Court, namely the crimes over which the Court has jurisdiction, sequentially defined in articles 6, 7, and 8. Jurisdiction over persons is dealt with in articles 12 and 26, while territorial jurisdiction is

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<sup>3</sup> [Order for submissions](#), ICC-02/05-01/20-135.

<sup>4</sup> [Request to Dismiss \*In Limine\* the “Acte d’appel de la «Decision on the Defence Request and Observations on Reparations pursuant to Article 75-1 of the Rome Statute» \(ICC-02/05-01/20-117\)”](#), ICC-02/05-01/20-137 (the ‘Request’).

<sup>5</sup> [Request](#), paras 7-8 (emphasis in original).

<sup>6</sup> *Soumissions de la Défense en vertu de l’Ordonnance* ICC-02/05-01/20-135 OA3, ICC-02/05-01/20-144 (the ‘Submissions’), para. 5.

<sup>7</sup> Submissions, paras 6-8.

specified by articles 12 and 13 (b), depending on the origin of the proceedings. Lastly, jurisdiction *ratione temporis* is defined by article 11.<sup>8</sup>

7. Further, the Appeals Chamber, in its previous jurisprudence, has clarified:

The Appeals Chamber understands from the phrase “decision with respect to” that the operative part of the decision itself must pertain directly to a question on the jurisdiction of the Court or the admissibility of a case. It is not sufficient that there is an indirect or tangential link between the underlying decision and questions of jurisdiction or admissibility.<sup>9</sup>

8. The Appeals Chamber notes that the operative part of the Impugned Decision dismissed Mr Abd-Al-Rahman’s request for the Pre-Trial Chamber to consider the adoption and implementation of a series of proposed additional principles on reparations, pursuant to article 75(1) of the Statute.<sup>10</sup> Mr Abd-Al-Rahman appears to base his present claim that the Impugned Decision is ‘a decision with respect to jurisdiction’ on the Pre-Trial Chamber’s use of language to the effect that the request did not fall ‘within the Chamber’s sphere of competence’. The Appeals Chamber, however, considers that this reference is not sufficient to bring the decision within the scope of article 82(1)(a) of the Statute. In particular, the Impugned Decision makes no pronouncement with respect to any of the types of jurisdiction set out in the jurisprudence cited above. Nor does it suggest that the Court is not competent to consider a matter.

9. As the Impugned Decision does not pertain to a question of the jurisdiction of the Court as previously defined by the Appeals Chamber’s jurisprudence, it cannot be appealed under article 82(1)(a) of the Statute. The Appeals Chamber, therefore, dismisses the appeal as inadmissible.


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<sup>8</sup> 14 December 2006, [ICC-01/04-01/06-772](#), paras 21-22.

<sup>9</sup> *Situation in the Republic of Kenya*, [Decision on the admissibility of the ‘Appeal of the Government of Kenya against the “Decision on the Request for Assistance Submitted on Behalf of the Government of the Republic of Kenya Pursuant to Article 93\(10\) of the Statute and Rule 194 of the Rules of Procedure and Evidence”](#)’, 10 August 2011, ICC-01/09-78, para. 15; *The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, [Decision on the admissibility of the ‘Appeal Against Decision on Application Under Rule 103’ of Ms Mishana Hosseinioun of 7 February 2012](#)’, 9 March 2012, ICC-01/11-01/11-74, para. 10.

<sup>10</sup> [Impugned Decision](#), para. 5; p. 7.

Done in both English and French, the English version being authoritative.

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**Judge Piotr Hofmański**  
**Presiding**

Dated this 4<sup>th</sup> day of September 2020

At The Hague, The Netherlands