

1 International Criminal Court

2 Appeals Chamber

3 Situation: Darfur, Sudan

4 In the case of The Prosecutor vs Ali Muhammad Ali Abd-Al-Rahman

5 ICC-02/05-01/20

6 Presiding Judge Piotr Hofmański

7 Appeals Judgment - Courtroom 2/Interactio

8 Thursday, 5 November 2020

9 (The hearing starts in open session at 11.01 a.m.)

10 THE COURT OFFICER: [11:01:15] The International Criminal Court is now session.

11 PRESIDING JUDGE HOFMAŃSKI: [11:01:27] Good morning.

12 Would the court officer please call the case.

13 THE COURT OFFICER: [11:01:35] Good morning, your Honour.

14 The situation in Darfur, Sudan, in the case of The Prosecutor vs Ali Muhammad Ali

15 Abd-Al-Rahman, case reference ICC-02/05-01/20.

16 And for the record, we are in open session.

17 PRESIDING JUDGE HOFMAŃSKI: [11:01:53] Thank you, court officer.

18 I am Judge Piotr Hofmański, presiding in this appeal arising from the case of the

19 Prosecutor against Ali Muhammad Ali Abd-Al-Rahman.

20 My fellow Judges in this appeal are Judge Chile Eboe-Osuji, Judge Howard Morrison,

21 Judge Luz del Carmen Ibáñez Carranza, and Judge Solomy Balungi Bossa.

22 Due to COVID restrictions, the hearing is conducted on a virtual basis with myself

23 and all parties and participants attending remotely via the Interactio system.

24 The hearing is accessible for everyone via ICC website.

25 May I ask the parties to introduce themselves for the record, please, starting with the

1 Defence.

2 Hello, Mrs Brady, are you accessible?

3 THE COURT OFFICER: [11:03:26] Ms Brady, you have the floor.

4 MS BRADY: [11:03:34] Good morning, your Honours. And good morning
5 everyone in this courtroom. My name is Helen Brady and I'm the senior appeals
6 counsel in this case. I'm appearing today with Ms Priya Narayanan, appeals counsel.

7 Thank you.

8 PRESIDING JUDGE HOFMAŃSKI: [11:03:53] Thank you.

9 And the Defence, please.

10 Mr Laucci, you have the floor.

11 MR LAUCCI: [11:04:58] (Interpretation) Yes, I think that there was a technical
12 problem.

13 So I represent the Defence team, Cyril Laucci, lead counsel, and Ahmad Issa. And
14 I was saying that Madam Vanessa Gree, our assistant lawyer, couldn't be present
15 today given that it's the first time that we have this virtual case before the Court, and
16 I would like to say I'm very pleased to be a new member of the Defence team.
17 Thank you.

18 PRESIDING JUDGE HOFMAŃSKI: [11:05:28] (Interpretation) Thank you.

19 (Speaks English) Thank you very much.

20 For the record, I note that Mr Abd-Al-Rahman participates via Interactio from a
21 remote location.

22 Today the Appeals Chamber will deliver its judgment in the appeal of
23 Mr Abd-Al-Rahman against the decision of the Pre-Trial Chamber II of 10 July 2020
24 entitled "Decision on the Defence request under Article 67(1)(f) of the Rome Statute."
25 This is a non-authoritative summary of the Appeals Chamber's written judgment in

1 the appeal. The latter will be notified after the hearing, together with the separate
2 concurring opinion by Judge Ibáñez Carranza.

3 I will now briefly outline the procedural history of this appeal.

4 On 10 July 2020, the Single Judge, on behalf of Pre-Trial Chamber II - I will refer to
5 this as the "Pre-Trial Chamber" - rejected Mr Abd-Al-Rahman's request for an order to
6 Registry to provide the Defence team with the interpretation and translation services
7 that are necessary for the preparation of the suspect's defence and for his
8 communication with the Defence team pursuant to Article 67(1)(f) of the Statute. I
9 will refer to this decision as the "Impugned Decision".

10 In the Impugned Decision, the Pre-Trial Chamber held that the right to interpretation,
11 translation set out in Article 67(1)(f) of the Statute is limited to the purpose of
12 understanding proceedings and does not cover client/counsel communications.

13 On 7 August 2020, the Pre-Trial Chamber granted Mr Abd-Al-Rahman leave to
14 appeal their Impugned Decision.

15 On 13 August 2020, Mr Abd-Al-Rahman filed his appeal against the Impugned
16 Decision.

17 At the outset, the Appeals Chamber notes that some of the arguments raised in
18 Mr Abd-Al-Rahman's appeal do not relate to the findings in the Impugned Decision
19 and are thus dismissed *in limine*.

20 The essential argument that is addressed in the judgment is whether the Pre-Trial
21 Chamber adopted an excessively limited definition of proceedings within the
22 meaning of Article 67(1)(f) of the Statute in excluding communication between the
23 suspect and his or her counsel from its ambit.

24 Mr Abd-Al-Rahman contends that counsel is the main point of contact through whom
25 the suspect is able to understand and follow the proceedings. He submits that the

1 interpretation of the Statute adopted by the Pre-Trial Chamber is incompatible with
2 the right of every detained person to communicate fully, where necessary, with the
3 assistance of an interpreter, with his or her Defence counsel, or assistants to his or her
4 Defence counsel.

5 Both the Prosecutor and the Registrar submit that the Pre-Trial Chamber's
6 interpretation was correct.

7 I shall now turn to the Appeals Chamber ruling on Mr Abd-Al-Rahman's appeal.

8 The Appeals Chamber can find no error in the Pre-Trial Chamber's interpretation of
9 the word "proceedings" in Article 67(1)(f) of the Statute. This provision expressly
10 limits the right to interpretation and translation to situations in which the proceedings
11 of or documents presented in the Court are not in the language which the accused
12 fully understands and speaks. It does not relate to communication with Defence
13 counsel. This is consistent with the human rights jurisprudence concerning the
14 corresponding provisions in human rights treaties.

15 The Appeals Chamber therefore finds that the person with sufficient means to do so,
16 must pay for any interpretation services that may be necessary to facilitate
17 communication with their legal team. In the case of persons who do not have
18 sufficient means to pay for their legal assistance, any interpretation costs for the
19 purpose of client/counsel communications must be considered within the scope of the
20 legal assistance scheme.

21 The Appeals Chamber considers that the fact that the suspect and his counsel do not
22 speak the same language and cannot communicate without assistance clearly has the
23 potential to impact on the rights enshrined in Article 67(1)(b) and (d) of the Statute.

24 Therefore, a solution must be found to allow communication to take place.

25 The Pre-Trial Chamber found that it is the responsibility of counsel to use the

1 legal aid funds to which the suspect is entitled to ensure that his or her client's needs
2 in terms of communication with the Defence counsel are adequately satisfied.

3 If Mr Abd-Al-Rahman considers that such arrangements are inadequate to ensure an
4 effective and efficient defence, the appropriate application for any additional
5 assistance considered reasonably necessary must be made to the Registrar in the first
6 instance.

7 The Appeals Chamber understands that Mr Abd-Al-Rahman freely chose counsel
8 with whom he cannot communicate. While this choice of counsel has been respected,
9 it is for the Pre-Trial Chamber to ensure that this situation does not impact on the
10 delivery of an effective and efficient defence on behalf of Mr Abd-Al-Rahman.

11 For these reasons, the Appeals Chamber finds it's appropriate to confirm the
12 Impugned Decision.

13 Judge Ibáñez Carranza appends to the judgment a partially dissenting opinion, which
14 sets out her views on the need for a systematic, systematic and comprehensive
15 reading of defence rights. She considers that in the circumstances of the present case,
16 Mr Abd-Al-Rahman has the right to avail of interpretation services in order to
17 communicate with his Defence counsel for the purposes of preparing his defence, but
18 the exercise of this right may be modulated in the manner provided in the Statute.

19 This brings us to the end of the summary of the Appeals Chamber's judgment.

20 I would like to thank the court reporters, interpreters and other Registry staff for their
21 valuable assistance today in holding this hearing.

22 The hearing is adjourned.

23 (The hearing ends in open session at 11.14 a.m.)