

1 International Criminal Court

2 Appeals Chamber

3 Situation: Darfur, Sudan

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

5 (Ali Kushayb) - ICC-02/05-01/20

6 Presiding Judge Piotr Hofmański

7 Appeals Judgment - Courtroom 2/Interactio

8 Friday, 18 December 2020

9 (The hearing starts in open session at 2.04 p.m.)

10 THE COURT OFFICER: [14:05:45] The International Criminal Court is now in
11 session.

12 PRESIDING JUDGE HOFMAŃSKI: [14:06:03] Good afternoon.

13 Would the court officer please call the case.

14 THE COURT OFFICER: [14:06:10] Good afternoon, your Honour.

15 The situation in Darfur, Sudan, in the case of The Prosecutor versus Ali
16 Muhammad Ali Abd-Al-Rahman, case reference ICC-02/05-01/20.

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

18 PRESIDING JUDGE HOFMAŃSKI: [14:06:25] Thank you very much.

19 I am Judge Piotr Hofmański, presiding in this appeal arising from the case of
20 the Prosecutor against Ali Muhammad Ali Abd-Al-Rahman. My fellow
21 judges in this appeal are Judge Chile Eboe-Osuji, Judge Howard Morrison,
22 Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa.

23 Due to the COVID-19 restrictions, this hearing is conducted on a virtual basis
24 with myself and all parties and participants attending remotely via the
25 Interactio system.

1 May I ask the parties to introduce themselves for the record please, starting
2 with the Defence.

3 Mr Laucci, you have the floor.

4 MR LAUCCI: [14:07:19] (Interpretation) Thank you, your Honour. For the
5 Defence we have the -- we have Cyril Laucci, lead counsel; Vanessa Gree, legal
6 assistant; Ahmad Issa, case manager; and Marion Carrin who is responsible for
7 analysing evidence.

8 MS REGUE BLASI: [14:08:03] Good afternoon, your Honours. The
9 Prosecution is represented today by Mr Reinhold Gallmetzer, appeals counsel
10 and myself, Meritxell Regue, also appeals counsel.

11 PRESIDING JUDGE HOFMAŃSKI: [14:08:24] Thank you very much.
12 For the record, I note that Mr Abd-Al-Rahman participates via Interactio from a
13 remote location.

14 Today, the Appeals Chamber will deliver its judgment in the appeal of
15 Mr Abd-Al-Rahman against the decision of Pre-Trial Chamber II of 18 August
16 2020, entitled, "Decision on request and observations on reparations pursuant
17 to Article 75(1) of the Rome Statute."

18 This is a non-authoritative summary of the Appeals Chamber's written
19 judgment in the appeal. The latter will be notified after this hearing.

20 I will now briefly explain the context of this appeal.

21 On 17 July 2020, Mr Abd-Al-Rahman submitted a request in respect of
22 additional principles on reparations for victims in this case. In the request, he
23 invited the Pre-Trial Chamber to adopt and apply, pursuant to Article 75(1) of
24 the Statute, a number of additional reparations principles and to consider
25 inviting submissions under Rule 103(1) of the Rules of Procedure and Evidence

1 on such principles.

2 In its decision on the request, the Pre-Trial Chamber found that there was no
3 legal basis for the request as the request did not fall within the Pre-Trial
4 Chamber's sphere of competence. Accordingly, the Pre-Trial Chamber
5 dismissed the request *in limine*.

6 Mr Abd-Al-Rahman sought leave to appeal the decision of the Pre-Trial
7 Chamber, which I will call the impugned decision.

8 The Pre-Trial Chamber granted the request for leave to appeal in respect of the
9 question of whether the Pre-Trial Chamber is competent to consider

10 Mr Abd-Al-Rahman's proposal for the adoption of additional principles on
11 reparations under Article 75(1) of the Statute, and to invite the observations of
12 the amici curiae on his proposal.

13 In the present appeal, Mr Abd-Al-Rahman raises four grounds challenging the
14 Pre-Trial Chamber's decision to dismiss the request *in limine*.

15 I will reach the merits of the appeal in a moment, but first, I will address the
16 scope of the appeal.

17 In today's judgment, the Appeals Chamber notes that the issue on appeal
18 relates to the Pre-Trial Chamber's determination of its role in dealing with
19 reparations for victims during the pre-trial proceedings. However,

20 Mr Abd-Al-Rahman argues in his third ground of appeal that the Single Judge
21 did not have the authority to make a ruling in respect of the jurisdiction of the
22 Court.

23 There is a fundamental difference between a question of the procedural
24 competence of a chamber and that of the jurisdiction of the Court over a case.

25 The latter question was not posed in the decision granting leave to appeal.

1 Therefore, Mr Abd-Al-Rahman's third ground falls outside of the scope of the
2 appeal and it is dismissed *in limine*.

3 In his fourth ground of appeal, Mr Abd-Al-Rahman calls into question the
4 Pre-Trial Chamber's decision to rule on the request without first hearing the
5 views and concerns of victims pursuant to Article 68(3) of the Statute.

6 The Appeals Chamber notes that nowhere in the request for leave to appeal did
7 Mr Abd-Al-Rahman argue that the impugned decision was made in violation
8 of Article 68(3) of the Statute. Thus, the Appeals Chamber finds that this
9 latter issue was not before the Pre-Trial Chamber in granting leave and it is not
10 sufficiently connected to the issue for which leave was granted so as to bring it
11 within the scope of the present appeal.

12 Accordingly, Mr Abd-Al-Rahman's fourth ground of appeal is dismissed *in*
13 *limine*.

14 I shall now turn to the Appeals Chamber's ruling on Mr Abd-Al-Rahman's first
15 and second grounds of appeal.

16 In his first ground, he argues that the Pre-Trial Chamber erred in finding that
17 the adoption of and implementation of the proposed additional principles on
18 reparations required an amendment of the Statute or the Court's legal
19 framework.

20 In his second ground, he argues that the Pre-Trial Chamber erred in finding
21 that it had no jurisdiction to adjudicate the request.

22 I shall address both the first and second ground together, as they both relate to
23 the central issue to be determined, that is, whether the Pre-Trial Chamber has
24 the competence to adopt Mr Abd-Al-Rahman's proposed additional principles
25 on reparations.

1 Indeed, in the impugned decision, the Pre-Trial Chamber not only found that
2 the adoption of the proposed additional reparations principles falls outside the
3 powers and duties of the Pre-Trial Chamber, but also that, more broadly,
4 nowhere in the Court's legal framework has a role been conceived for the
5 Pre-Trial Chamber to deal with issues related to reparations for victims. It
6 explained that, only once a person has been convicted does the Court's
7 proceedings on reparations begin.

8 The Appeals Chamber finds that the Pre-Trial Chamber's interpretation of its
9 competence to deal with issues related to reparations for victims is not
10 consistent with the Court's overall statutory scheme. A chamber of the Court,
11 whether pre-trial, trial or appeal, must permit victims whose personal interests
12 are affected to present their views and concerns at any stage of the proceedings
13 determined to be appropriate by the Court. This duty may, in some cases,
14 compel a trial chamber to hear submissions related to reparations.

15 Depending on the circumstances, there may be a role for a chamber to make
16 interim orders and decisions in relation to reparations proceedings.

17 Accordingly, the majority of the Appeals Chamber finds that the Pre-Trial
18 Chamber erred in holding that it was not the role of a chamber to rule in
19 respect of reparations for victims at the pre-trial stage and that the reparations
20 proceedings begins only after a person has been convicted.

21 Judge Ibáñez expresses her separate view on this point, explaining that the
22 Pre-Trial Chamber did not in fact err, insofar as it declined to rule on the
23 request. In Judge Ibáñez's view, while a pre-trial chamber can address some
24 preliminary issues related to reparations, it cannot settle principles relating to
25 concrete aspects of reparation or its implementation.

1 However, returning to the majority's view that the Pre-Trial Chamber erred,
2 this is only to say that the Pre-Trial Chamber lacked a basis of dismissing the
3 request *in limine*. It is another question entirely as to whether it would have
4 been appropriate for the Pre-Trial Chamber to act on the request and to adopt
5 any or all of the proposed additional principles on reparations.

6 In addition to taking issue with the legal basis for the impugned decision,
7 Mr Abd-Al-Rahman has requested that the Appeals Chamber reverse the
8 impugned decision and direct the Pre-Trial Chamber to rule on the merits of
9 the request after inviting submissions of amici curiae.

10 However, looking at the request itself, the Appeals Chamber notes that despite
11 characterising his request as a proposal for the adoption of additional
12 principles, apparently submitted with reference to Article 75(1) of the Statute,
13 a plain reading of Mr Abd-Al-Rahman's request reveals that he proposed
14 something very different.

15 Mr Abd-Al-Rahman proposes that the Trial Chamber determine the
16 appropriate reparations and oversee implementation of an order for
17 reparations that comes in advance for an eventual second order for reparations
18 made by the Pre-Trial Chamber under Article 75(2) of the Statute. Rather than
19 advancing additional principles on reparation that fit within the Court's legal
20 framework, Mr Abd-Al-Rahman has essentially suggested that the existing
21 procedure on reparation be thrown out.

22 Therefore, whether the request is dismissed *in limine* or assessed on its merits,
23 the outcome is the same. There is no basis for the Court's reparation regime
24 for the adoption of a proposal such as the one presented in
25 Mr Abd-Al-Rahman's request.

1 Given the nature of the request itself, the Appeals Chamber unanimously finds,
2 Judge Ibáñez concurring, that it would be inappropriate to direct the Pre-Trial
3 Chamber to examine the merits of the request under the circumstances.
4 Therefore, Mr Abd-Al-Rahman's first and second grounds of appeal are
5 dismissed.
6 For these reasons – and, for the reasons more fully explained in today's
7 judgment – the Appeals Chamber unanimously finds it appropriate to confirm
8 the impugned decision.
9 This brings us to the end of the summary of the Appeals Chamber's judgment.
10 I would like to thank the court reporters, interpreters and other Registry staff
11 for their valuable assistance today in holding this hearing.
12 The hearing is now adjourned.
13 (The hearing ends in open session at 2.19 p.m.)