

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **21 September 2020**

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

Prosecution Response to “*Mémoire d’appel de trois décisions*”

Source: Office of the Prosecutor

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I. INTRODUCTION

1. The Defence of Mr Abd-Al-Rahman (“Defence”) appeals three of the Single Judge’s decisions (“Appeal”),¹ namely the oral decision to proceed with the reading of the charges, notwithstanding the suspect’s waiver (“First Decision”);² the oral decision rejecting the suspect’s request that a minute of silence be observed in memory of the victims of the situation in Darfur (“Second Decision”);³ and the written “Decision on the Defence Request to provide reasoning for two oral decisions” (“Third Decision”) (collectively the “Three Decisions”).⁴
2. According to the Defence, the Single Judge erred in law: (a) by failing to provide reasons for the First and Second Decisions (“First Ground”);⁵ (b) in the Third Decision, by rejecting *in limine* the Defence request for written reasons for the First and Second Decisions on the basis that those decisions were *res judicata* (“Second Ground”);⁶ and (c) in the Third Decision, by holding that the deadline for appealing the First and Second Decisions had expired (“Third Ground”).⁷
3. The Appeal should be rejected *in limine*. The First and Second Decisions are *res judicata* and therefore no longer appealable. In addition, the arguments advanced against the Third Decision are based on a fundamental misunderstanding of that Decision and its relation to the First and Second Decisions. Because the Appeal is not founded on proper legal or factual grounds, the Appeals Chamber should be circumspect in its use of its time and resources in entertaining the merits of the Appeal. Instead, it should follow its recent approach in *Gbagbo & Blé Goudé*, where it held that “[t]he heavy workload of the Appeals Chamber [...] does not permit indulgence on points of no practical relevance”.⁸
4. Should the Appeals Chamber nevertheless decide not to reject the Appeal *in limine*, the Appeal should in any event be rejected on its merits. None of the Defence’s three grounds of appeal demonstrate that the Single Judge erred in the Three Decisions. In addition, the errors alleged in the Appeal do not materially affect the Three Decisions.

¹ [ICC-02/05-01/20-148](#).

² [ICC-02/05-01/20-T-001-ENG](#), 6:16-24.

³ [ICC-02/05-01/20-T-001-ENG](#), 22:4-12.

⁴ [ICC-02/05-01/20-118](#).

⁵ [Appeal](#), paras. 11-25.

⁶ [Appeal](#), paras. 11, 26-28.

⁷ [Appeal](#), paras. 11, 29-33.

⁸ [ICC-02/11-01/15-1376-Red OA14](#), para. 7.

II. SUBMISSIONS

A. The Appeal should be rejected *in limine*

(i) *The First and Second Decisions are res judicata and therefore not appealable*

5. The Single Judge issued the First and the Second Decisions during Mr Abd-Al-Rahman's initial appearance on 15 June 2020. On 18 June 2020, the Defence filed its request for additional reasoning in relation to these two oral decisions ("Defence Request").⁹ The Defence did not seek leave to appeal the First and Second Decisions, the timeline for which was to expire on 22 June 2020.¹⁰

6. On 18 August 2020, the Single Judge—in his Third Decision—rejected the Defence Request *in limine*, holding as follows:¹¹

The Single Judge notes that a party not satisfied about a particular decision (whether as to its outcome, its content or other features) has the option to request leave to appeal it, pursuant to article 82(1)(d) of the Statute, within five days of the date when the decision has been issued.

Since Counsel opted not to proceed with a request under article 82(1)(d) within the relevant time limit, that procedural avenue is now foreclosed. Both the First and the Second Oral Decisions are now *res judicata* and the [Defence] Request must be dismissed *in limine*.

7. The Defence sought leave to appeal the Three Decisions only on 24 August 2020.¹² This was almost two months after the First and Second Decisions became final due to the expiry of the deadline under rule 155(1).

8. Because the First and Second Decisions are *res judicata*, an appeal against them is no longer available. The Appeal against them must therefore be rejected *in limine*. As held by Judge Pikis, "*res judicata* in its simplest form denotes that a cause of action determined on its merits or an issue incidental to the cause cannot be re-litigated by the same parties before a court of law. The parties are estopped from making the same cause or issues incidental thereto the subject of fresh litigation."¹³ By appealing the First and Second Decisions, the Defence inappropriately seeks to re-litigate final decisions.

9. The fact that the Single Judge granted the Defence's application for leave to appeal the Three Decisions—apparently contradicting his previous finding that the First and Second

⁹ [ICC-02/05-01/20-2](#).

¹⁰ See rule 155(1) of the [Rules of Procedure and Evidence](#).

¹¹ [Third Decision](#), paras. 7-8.

¹² [ICC-02/05-01/20-130](#).

¹³ [ICC-01/04-01/06-568 OA3](#), 13 October 2006, para. 17. Diss. Op.

Decisions were *res judicata*—¹⁴ does not affect the finality of the First and Second Decisions. The finality of decisions is a matter of law and not one of judicial discretion. Once the remedies against a decision provided for in the Statute and the Rules are exhausted, or the timeline to seek a remedy has expired, a judicial decision “has binding force between the parties to the dispute”.¹⁵ Similarly, the Appeals Chamber’s jurisdiction does not extend to reviewing final decisions, save for a revision of a conviction or sentence under article 84. As the Appeals Chamber has previously noted, “its jurisdiction is clearly and exhaustively defined in the Statute and Rules of Procedure and Evidence”.¹⁶ Article 82(1)(d) does not foresee an interlocutory appeal where the deadline for seeking leave to appeal under rule 155(1) has expired.

10. In this case—and consistent with its prior practice—the Appeals Chamber should therefore exercise its own power “to establish the true nature of [the] impugned decision[s], in order to ensure that the decision[s] in question [are] appropriately before it, and that the appeal is determined pursuant to the correct legal basis”.¹⁷ Accordingly, on the basis that the First and Second Decisions are *res judicata*, the Appeals Chamber should reject the Defence’s appeals against those decisions *in limine*.

(ii) *The appeal grounds against the Third Decision should be rejected in limine because they are based on a fundamental misunderstanding of that decision*

11. The Defence’s Second and Third Grounds, which are closely interrelated, challenge the Third Decision. They allege that the Single Judge erred in law by rejecting *in limine* the Defence Request for written reasons for the First and Second Decisions on the basis that those decisions were *res judicata* (Second Ground);¹⁸ and by holding that the deadline for appealing the First and Second Decisions had expired (Third Ground).¹⁹ At the core of these Grounds are the Defence’s arguments that the First and Second Decisions can only be properly appealed once the Single Judge has provided the full reasons for those decisions,²⁰ and that the deadline for seeking leave to appeal those decisions runs from the time when the Single Judge has provided the full reasons.²¹

¹⁴ [ICC-02/05-01/20-142](#).

¹⁵ Administrative Tribunal Case, [ICJ Reports](#), 1954, p. 53.

¹⁶ [ICC-01/04-01/07-3132 OA12](#), para. 6.

¹⁷ [ICC-01/05-01/13-1964 OA13](#), paras. 12-13, citing to [ICC-01/04-01/06-2953](#), para. 50.

¹⁸ Second Ground, [Appeal](#), paras. 11, 26-28.

¹⁹ Third Ground, [Appeal](#), paras. 11, 29-33.

²⁰ Second Ground, [Appeal](#), paras. 27-28.

²¹ Third Ground, [Appeal](#), paras. 30-31.

12. However, these arguments fundamentally misunderstand the Third Decision and its relation to the First and Second Decisions. The Defence’s arguments imply that it can appeal the First and Second Decisions and its reasoning (or lack thereof), as a result of the Third Decision. However, the Third Decision is entirely unrelated to the merits of the First and Second Decisions. Nor does it provide any reasons for those decisions, as the Defence correctly acknowledges.²² Instead, in his Third Decision, the Single Judge rejected *in limine* the Defence Request seeking further reasons for the First and Second Decisions because it held that those decisions were already final.²³

13. If, *arguendo*, the Single Judge had granted the Defence Request and had provided additional reasons for the First and Second Decisions in his Third Decision, the deadline for appealing those decisions could be deemed to run from the time of the Third Decision.²⁴ But this was not the case. Because the Defence failed to challenge the First and Second Decisions by filing a timely application for leave to appeal under article 82(1)(d), the only avenue available for the Single Judge in his Third Decision was to reject the Defence Request *in limine*. Accordingly, since the relevant decisions are not sufficiently related to each other, the Defence’s attempt to bypass the finality of the First and Second Decisions and to extend their “appealability” through an appeal against the Third Decision must equally be rejected *in limine*.

14. The contrary view, as argued now by the Defence, would lead to absurd outcomes. No Trial Chamber or Pre-Trial Chamber decisions would ever become “final”.²⁵ A party would be able to keep challenging those decisions indefinitely, simply by arguing that the reasoning remains insufficient, thereby undermining a Chamber’s ability to rule on the issues including those on the conduct of the proceedings.

15. In conclusion, the appeal grounds against the Third Decision (the Second and Third Grounds) should be rejected *in limine* because they fundamentally misunderstand the Third Decision and its relation to the First and Second Decisions.

²² [Appeal](#), para. 4. After rejecting the Defence Request *in limine*, the Single Judge merely made some *obiter* “remarks [...] for the sake of the public’s understanding” ([Third Decision](#), para. 9).

²³ [Third Decision](#), paras. 7-8.

²⁴ [Appeal](#), para. 31.

²⁵ As noted in para. 29 below, if at a later stage, following the Trial Chamber’s decision under article 74, the Defence can demonstrate that an interlocutory decision constituted an error that materially affected the Trial Chamber’s article 74 decision, then the Defence can make that argument as part of its appeal against the Trial Chamber’s decision under article 74, as part of its appeal under article 81.

B. The Single Judge did not err in his Three Decisions

16. If the Appeals Chamber decides not to reject the three appeal grounds *in limine* based on the reasons set out above, they should in any event be rejected on their merits. None of the three grounds of appeal demonstrate that the Single Judge erred in the Three Decisions. In addition, the errors alleged do not materially affect the Three Decisions.

(i) *First Ground: The Single Judge did not err in law by failing to provide reasons for the First and Second Decisions*

17. The Defence's arguments that the Single Judge erred by failing to provide sufficient reasons for the First and Second Decisions are unfounded and should be rejected.²⁶ The Defence incorrectly assumes that every judicial decision is governed by the reasoning requirements of article 74(5) concerning final decisions on the guilt or innocence of an accused.²⁷ However, as held by the Appeals Chamber, "[t]he extent of the reasoning will depend on the circumstances of the case".²⁸

18. The First and Second Decisions were discretionary decisions that the Single Judge issued to regulate the conduct of the initial appearance. Contrary to the Defence's submissions,²⁹ they set out with sufficient detail the "facts that [the Single Judge] found to be relevant in coming to his conclusion[s]".³⁰

(a) The First Decision was sufficiently reasoned

19. Concerning the First Decision, the Single Judge instructed the court officer to read out the charges against Mr Abd-Al-Rahman.³¹ The Single Judge gave this instruction to comply with one of the three core requirements of an initial appearance under article 60(1) and rule 121(1), namely to "satisfy [himself] that the person subject to the arrest warrant is informed of the crimes he is alleged to have committed".³² When the Defence objected to the Single Judge's instruction on the basis that Mr Abd-Al-Rahman waived his right for the charges to

²⁶ The First Ground of appeal is limited to the question whether the Single Judge provided adequate reasons for the First and Second Decisions. It does not extend to the question whether the procedural directions given by the Single Judge in the First Decision were consistent with the practice of the Court (*contra* Appeal, para. 15).

²⁷ Appeal, paras. 11-13, 26-27, 35.

²⁸ ICC-01/04-01/06-773 OA5, para. 20; and ICC-01/04-01/06-774 OA6, para. 30.

²⁹ Appeal, para. 14.

³⁰ ICC-01/04-01/06-773 OA5, para. 20; and ICC-01/04-01/06-774 OA6, para. 30, cited in Appeal, para. 13.

³¹ ICC-02/05-01/20-T-001-ENG, 6:16-18.

³² ICC-02/05-01/20-T-001-ENG, 4:18-21; see also ICC-02/05-01/20-T-001-ENG, 6:14-15.

be read to him,³³ the Single Judge overruled the Defence's objection, reiterating that in his view, the "charges should be appropriately read anyway".³⁴

20. The Single Judge's First Decision clearly set out the reasons for that decision, namely to comply with his duty under article 60(1) and rule 121(1) to "satisfy [himself] that the person subject to the arrest warrant is informed of the crimes he is alleged to have committed".³⁵ The Defence's objection merely expressed a disagreement with that ruling. Accordingly, the Single Judge overruled it, as he had already stated that he considered the reading of the charges not to be a mere matter of complying with the suspect's rights, but a duty imposed on him by article 60(1) and rule 121(1). Had the Defence provided a factual or legal basis for its objection—other than generally stating that Mr Abd-Al-Rahman waived his right of the charges to be read to him—the Single Judge could have addressed those arguments by providing additional reasons. But in light of an unsubstantiated Defence objection, the Single Judge had no duty to elaborate further on the reasons for his decision.

21. Accordingly, the Defence's arguments that the Single Judge failed to provide adequate reasons for the First Decision should be rejected.

(b) The Second Decision was sufficiently reasoned

22. Concerning the Second Decision, the Defence requested that "there may be a minute of silence observed in memory of all the victims of Darfur and more extensively in Sudan".³⁶ The Single Judge rejected the Defence's request, and provided short, but clear, reasons for his decision. He stated as follows: "Well, sir, this is -- I understand the purpose of the request, but this is not the place to do this. We will all do this individually and at the International Criminal Court we do this very often, we always think about the victims. So this request now is rejected. We'll continue with the proceedings."³⁷

23. Given the limited scope of the initial appearance³⁸ and the fact that the Defence's request was entirely unrelated to the conduct of the initial appearance, the Single Judge's reasons were fully adequate to dispose of the Defence's request. Had the Defence elaborated on its request, instead of simply stating a wish that a minute of silence be observed, the Single Judge could have addressed the Defence's arguments in his reasons. But since no such

³³ [ICC-02/05-01/20-T-001-ENG](#), 6:19-20.

³⁴ [ICC-02/05-01/20-T-001-ENG](#), 6:22-23.

³⁵ [ICC-02/05-01/20-T-001-ENG](#), 4:18-21; *see also* [ICC-02/05-01/20-T-001-ENG](#), 6:14-15.

³⁶ [ICC-02/05-01/20-T-001-ENG](#), 22:4-8.

³⁷ [ICC-02/05-01/20-T-001-ENG](#), 22:9-12.

³⁸ [ICC-02/05-01/20-T-001-ENG](#), 4:13-25.

arguments were provided, there was no need for the Single Judge to go any further in his reasoning.³⁹

24. Accordingly, the Defence's arguments that the Single Judge failed to provide adequate reasons for the Second Decision should be rejected.

(c) The Single Judge's *obiter* remarks in the Third Decision are irrelevant to this appeal

25. A significant part of the Defence's First Ground consists of challenges to the "remarks" made by the Single Judge in the Third Decision.⁴⁰ However, having found that the First and Second Decisions were *res judicata*, the Single Judge in his Third Decision did not provide reasons for those two Decisions.⁴¹ Instead, he merely made some "remarks [...] for the sake of the public's understanding [of the] full picture of the facts underlying the [Defence] Request".⁴²

26. The Defence acknowledges that the "remarks" do not constitute "explanatory statements" of the First and Second Decisions, but argues that in any event they would have been insufficient to provide adequate reasoning for the First and Second Decisions.⁴³ Because the "remarks" are unrelated to the First and Second Decisions, any potential error in those *obiter* remarks would not impact on them. The Defence's lengthy arguments concerning those remarks should therefore be disregarded.

27. For the reasons set out above, the First Ground should be rejected.

(ii) *Second Ground: The Single Judge did not err in law in his Third Decision by rejecting in limine the Defence Request*

28. Under its Second Ground, the Defence alleges that the Single Judge erred in law in the Third Decision by rejecting *in limine* the Defence request for written reasons for the First and Second Decisions on the basis that those decisions were *res judicata*.⁴⁴ According to the Defence, the finality of the First and Second Decisions had no impact on the Single Judge's

³⁹ The Defence's general statement that Mr Abd-Al-Rahman is presumed innocent ([ICC-02/05-01/20-T-001-ENG](#), 22:16-20; [Appeal](#), paras. 20-21) cannot be understood as an argument in support of the Defence's request for a minute of silence.

⁴⁰ [Appeal](#), paras. 16-19 (relating to the [First Decision](#)); and paras. 21-24 (relating to the [Second Decision](#)).

⁴¹ [Third Decision](#), paras. 7-8.

⁴² [Third Decision](#), para. 9. For the content of the "remarks", see paras. 10-14.

⁴³ [Appeal](#), para. 16.

⁴⁴ Second Ground, [Appeal](#), paras. 11, 26-28.

duty to provide reasons for the decision⁴⁵ and the absence of reasons continues to be an error, which should be corrected by the Appeals Chamber.⁴⁶

29. The Defence's arguments fail to appreciate the scope of appellate proceedings before this Court. The remedy of appeal against a Pre-Trial or a Trial Chamber's interlocutory decision which has become final (*res judicata*) simply does not exist under the Statute and the Rules. The Appeals Chamber has no jurisdiction to review and correct such decisions, even if, *arguendo*, there was an error. If at a later stage, following the Trial Chamber's decision under article 74, the Defence can demonstrate that an interlocutory decision constituted an error that materially affected the Trial Chamber's article 74 decision, then the Defence can make that argument as part of its final appeal against the Trial Chamber's decision under article 74.

30. For the reasons set out above, the Second Ground should be rejected.

(iii) *Third Ground: The Single Judge did not err in law in his Third Decision by holding that the deadline for appealing the First and Second Decisions had expired*

31. As its Third Ground, the Defence argues that the Single Judge erred in the Third Decision by holding that the First and Second Decisions were *res judicata* because the deadline for appealing these decisions had expired.⁴⁷ According to the Defence, the deadline for appealing a decision only runs from the time when a chamber provides its full reasons, which—according to the Defence—the Single Judge did not do in relation to the First and Second Decisions.⁴⁸ This argument should be rejected for the following reasons:

32. First, as shown in response to the First Ground above, the Single Judge provided sufficient reasons for the First and Second Decisions during the initial appearance. Accordingly, the Defence's arguments to the contrary, are mere disagreements with all Three Decisions.

33. Second, although during the initial appearance the Defence asked for his objections to put on the record and for the Single Judge to provide additional reasons to support the First and Second Decisions,⁴⁹ this did not suspend the deadline under rule 155(1) to seek leave to appeal. Critically, the Single Judge did not indicate that additional reasons would follow. He

⁴⁵ [Appeal](#), para. 26.

⁴⁶ [Appeal](#), paras. 27-28.

⁴⁷ [Appeal](#), paras. 29-33.

⁴⁸ [Appeal](#), paras. 30-31.

⁴⁹ [ICC-02/05-01/20-T-001-ENG](#), 22:13-20; [Appeal](#), para. 30.

merely confirmed that the Defence's objections were already on the record and ordered the proceedings to continue.⁵⁰ This situation is not analogous to the Court's practice where a chamber may issue a decision, while at the same time indicating that the reasons for that decision would follow in due course,⁵¹ or where the deadline for filing an application for leave to appeal was suspended until an anticipated dissenting opinion⁵² or a French translation of the decision⁵³ had been notified to the parties. On the contrary, the Defence's unilateral request for additional reasons did not suspend the deadline for appealing the First and Second Decisions. If that was the case, a party could suspend the finality of a decision that it disagrees with indefinitely, simply by asking for additional reasons.

34. Third, the Single Judge correctly held that the First and Second Decisions were *res judicata* because the deadline for appealing these decisions had expired.⁵⁴ In so doing, the Single Judge merely acknowledged that more than five days had passed since the two decisions were issued and that the Defence had not sought leave to appeal those decisions pursuant to article 82(1)(d) and rule 155(1).⁵⁵ The Defence did not show any error in the Single Judge's application of rule 155(1). In particular, the fact that the Single Judge granted the Defence's request for leave to appeal does not show an error in the Third Decision.⁵⁶ The correctness of a decision is not determined by a decision granting or denying leave to appeal it under article 82(1)(d). The sole question is whether the issue arising from the appealed decision meets the criteria in the provision.⁵⁷ In addition, as previously held by the Appeals Chamber, an impugned decision cannot be substantially modified through a subsequent clarification of the decision.⁵⁸ Finally, and as noted above, the Single Judge's decision to grant leave to appeal the First and Second Decisions cannot affect the finality of these

⁵⁰ [ICC-02/05-01/20-T-001-ENG](#), 22:21. The Single Judge never even alluded to the possibility that additional reasons to the First or Second Decisions would follow at later stage. Accordingly, the Defence's argument that the Third Decision amounts to an express refusal to provide further reasons for the First and Second Decisions (Appeal, para. 31) is wholly unfounded.

⁵¹ The Defence incorrectly relies on [ICC-02/11-01/15-T-232-ENG](#) (Appeal, para. 32), where the Trial Chamber acquitted Mr Gbagbo and Mr Blé Goudé, indicating that the full reasons for the acquittals will be provided in due course. The Trial Chamber also expressly stated that "[t]he deadline for appealing the present decision will start running at the moment the parties are notified of the full reasons for it ([ICC-02/11-01/15-T-232-ENG](#), 4:10-11). The correctness of this decision in the context of an article 74 decision is currently subject to an appeal.

⁵² See e.g. [ICC-02/17-62](#), paras. 6-7.

⁵³ See e.g. [ICC-01/14-01/18-403-Red-Corr](#), para. 240.

⁵⁴ [Third Decision](#), paras. 7-8.

⁵⁵ [Third Decision](#), paras. 7-8.

⁵⁶ *Contra* [Appeal](#), para. 33.

⁵⁷ ICC-02/04-01/05-20-US-Exp, para. 22, unsealed pursuant to Decision no. [ICC-02/04-01/05-52](#)

⁵⁸ [ICC-01/04-01/06-2205 OA15 OA16](#), para. 92.

decisions. The finality of decisions is a matter of law rather than one of judicial discretion, and the Single Judge had no authority to grant leave to appeal against a final decision.

35. For the reasons set out above, the Third Ground should be rejected.

(iv) *The errors alleged in the Appeal do not materially affect the Three Decisions*

36. According to the Appeals Chamber's consistent practice, it will use its power under rule 158 to reverse an impugned decision "only if the decision was materially affected by an error. [...] Accordingly, as part of the reasons in support of a ground of appeal, an appellant is obliged not only to set out the alleged error, but also to indicate, with sufficient precision, how this error would have materially affected the impugned decision."⁵⁹ The Appeals Chamber has further held that "[a] decision is materially affected by an error of law if the Pre-Trial or Trial Chamber would have rendered a decision that is substantially different from the decision that was affected by the error, if it had not made the error."⁶⁰

37. Even if, *arguendo*, the Defence had established any of the errors raised in the Appeal, it nevertheless fails to demonstrate that the alleged errors materially affected any of the Three Decisions. In particular, it does not demonstrate that the Single Judge "would have rendered a decision that is substantially different from the [Three Decisions]".⁶¹ The Defence's general allegation that the errors affect Mr Abd-Al-Rahman's right to a fair trial⁶² and his presumption of innocence⁶³ are unsupported. It is unconceivable how the reading of the charges during the initial appearance in accordance with article 60(1) and rule 121(1) and the Single Judge's refusal to hold a minute of silence during the initial appearance for the victims of Darfur could violate Mr Abd-Al-Rahman's right to a fair trial or his presumption of innocence.

38. The lack of impact of the alleged errors is evidenced by the Defence's inability to articulate a remedy to address any impact of the alleged violations in its request for a remedy. The Defence merely makes an unspecific request to the Appeals Chamber to order all public information and/or awareness activities that the Appeals Chamber deems appropriate to correct the perception of the violation of Mr Abd-Al-Rahman's presumption of innocence.⁶⁴

⁵⁹ [ICC-02/11-01/11-548-Red OA4](#), para. 18; [ICC-01/09-02/11-274 OA](#), para. 85; [ICC-01/04-01/10-283 OA](#), para. 18.

⁶⁰ [ICC-02/11-01/11-321 OA2](#), para. 44; [ICC-01/04-169 OA](#), para. 84; [ICC-01/04-01/06-3121-Red A5](#), para. 19.

⁶¹ [ICC-01/04-169 OA](#), 13 July 2006, para. 84.

⁶² [Appeal](#), para. 35.

⁶³ [Appeal](#), paras. 36-39.

⁶⁴ [Appeal](#), para. 42.

39. In any event, the Defence's arguments regarding the impact of the Three Decisions⁶⁵ are unrelated to the errors raised in this appeal and therefore fail to demonstrate that the errors materially affected any of the Three Decisions.

40. The Appeal should also be rejected on the basis that the alleged errors do not materially affect any of the Three Decisions.

III. CONCLUSION

41. For the all reasons above, the Prosecution respectfully requests the Appeals Chamber to reject the Appeal.



James Stewart, Deputy Prosecutor

Dated this 21st day of September 2020
At The Hague, The Netherlands

⁶⁵ [Appeal](#), paras. 34-39.