

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/14-01/18

Date: 22 May 2020

TRIAL CHAMBER V

Before:

**Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA**

**Confidential *ex parte*, only available to the Prosecution, the Ngaißsona Defence,
the Yekatom Defence and the Registry**

**Decision on the Ngaißsona Defence Request for Leave to Appeal the Decision on
Restrictions on Contacts and Communications**

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

The Office of the Prosecutor

Fatou Bensouda
James Stewart
Kweku Vanderpuye

Counsel for the Alfred Yekatom

Mylène Dimitri
Peter Robinson

Counsel for Patrice-Edouard Ngaïssona

Geert-Jan Alexander Knoops

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Paddy Craig

**Victims Participation and Reparations
Section**

Other

TRIAL CHAMBER V of the International Criminal Court in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Article 82(1)(d) of the Rome Statute (the 'Statute'), issues this 'Decision on the Ngaïssona Defence Request for Leave to Appeal the Decision on Restrictions on Contacts and Communications'.

I. Procedural history and submissions

1. Following Mr Ngaïssona's surrender to the Court on 23 January 2019, Pre-Trial Chamber II (the 'PTC II') issued a series of decisions restricting Mr Ngaïssona's contacts and communications in pre-trial detention, pursuant to Regulation 101 of the Regulations of the Court (the 'Restrictions' and the 'Regulations', respectively).¹
2. Additionally, PTC II established the following procedure for its review of the Pre-Trial Restrictions (the 'Review Procedure'): (i) the Registry shall submit reports on the implementation of the restrictive measures (the 'Registry Reports'), every two months, and inform PTC II of any violation of the applicable restrictions or any other significant developments immediately; (ii) the Office of the Prosecutor (the 'Prosecution') shall submit observations on the Registry Reports, if any, within five days of notification; and (iii) the Ngaïssona Defence shall submit observations on the respective Registry Reports, as well as on the Prosecution's observations, if any, within 10 days of notification of the Registry Reports.²
3. On 6 March 2020, the Registry filed the ninth of these Registry Reports (the 'Ninth Registry Report').³ Upon instruction of PTC II,⁴ the Prosecution

¹ See overview of the procedural history in Decision on Mr Ngaïssona's Restrictions on Contacts and Communications in Detention, 17 April 2020, ICC-01/14-01/18-484-Conf-Exp-Red, confidential *ex parte* redacted version, only available to the Prosecution, the Ngaïssona Defence and the Registry, paras 1-5.

² Decision Pursuant to Regulation 101 of the Regulations of the Court, 15 April 2019, ICC-01/14-01/18-176-Conf-Exp, only available to the Prosecution and the Registry (confidential redacted version notified the same day, ICC-01/14-01/18-176-Conf-Red), para. 32.

³ Ninth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II, ICC-01/14-01/18-444-Conf-Exp, only available to the Prosecution, the Ngaïssona Defence and the Registry.

⁴ Email Order by PTC II to the Ngaïssona Defence, 11 March 2020, at 13:26.

provided its observations on this report on 16 March 2020 before the Presidency (the 'Prosecution Observations'),⁵ which were subsequently transmitted to this Chamber. In essence, the Prosecution submitted that the Restrictions should be upheld, that they continue to be necessary and that there exists no change of circumstances justifying their amendment.⁶ It concluded that the (then competent) Presidency should 'at a minimum, continue the existing [...] [R]estrictions'.⁷

4. On 19 March 2020, the Defence filed its observations to the Ninth Registry Report (the 'Defence Observations').⁸ Therein, it requested that the Restrictions be lifted immediately (the 'Initial Request').⁹ It submitted that PTC II imposed the Restrictions only for the duration of the pre-trial proceedings and that they are there not valid anymore.¹⁰ In the alternative, it requested that the Chamber make a new determination on the restrictions on Mr Ngaïssona's contacts and communications on the basis of a new Prosecution request, which the Chamber should ultimately reject.¹¹
5. The Chamber ordered further observations from the Registry, also in light of the measures taken in the Detention Centre in response to the Coronavirus Pandemic,¹² which the Registry filed on 6 April 2020.¹³

⁵ Prosecution's Observations on the "Ninth Registry report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II" (ICC-01/14-01/18-444-Conf-Exp), ICC-01/14-01/18-453-Conf-Exp, only available to the Prosecution, the Ngaïssona Defence and the Registry.

⁶ Prosecution Observations, ICC-01/14-01/18-453-Conf-Exp, paras 2, 5-10.

⁷ Prosecution Observations, ICC-01/14-01/18-453-Conf-Exp, para. 11.

⁸ Defence Observations to the "Ninth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II" (ICC-01/14-01/18-444-Conf-Exp), ICC-01/14-01/18-460-Conf-Exp, only available to the Prosecution, the Ngaïssona Defence and the Registry.

⁹ Defence Observations, ICC-01/14-01/18-460-Conf-Exp, paras 2, 32-33.

¹⁰ Defence Observations, ICC-01/14-01/18-460-Conf-Exp, paras 2, 12-13, 15.

¹¹ Defence Observations, ICC-01/14-01/18-460-Conf-Exp, paras 3, 14-15, 17-22.

¹² Email from the Chamber to the Detention Section, the Prosecution and the Ngaïssona Defence, 23 March 2020, at 11:33. The deadline for the observations was subsequently extended from 30 March 2020 to 6 April 2020, see email from the Chamber to the Registry, 27 March 2020, at 13:49.

¹³ Registry Observations on "Defence Observations to the "Ninth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II" (ICC-01/14-01/18-444-Conf-Exp)", ICC-01/14-01/18-460-Conf-Exp, ICC-01/14-01/18-469-Conf-Exp, only available to the Ngaïssona Defence and the Registry (confidential *ex parte* redacted version, only available to the Prosecution, the Ngaïssona Defence and the Registry, notified the same day, ICC-01/14-01/18-469-Conf-Exp-Red) (the 'Registry Observations').

6. On 17 April 2020, the Chamber, *inter alia*, rejected the Initial Request and decided that the Restrictions are to be maintained (the 'Impugned Decision').¹⁴ The Chamber further adopted the Review Procedure put in place by PTC II with the modification that the Registry should henceforth submit its reports every three months.¹⁵
7. On 28 April 2020, the Defence filed a request for leave to appeal the Impugned Decision (the 'Request').¹⁶ The Defence requests leave to appeal four issues (the 'Issues'), namely:
- (i) Whether the Chamber erred in extending the pre-trial restrictions to the trial stage while failing to consider the matter *de novo* despite the clear wording of regulation 101(2) which requires that the Prosecution file a request to the "Chamber seized of the case"¹⁷ [the 'First Issue'];
 - (ii) Whether the Chamber erred in finding that there were "reasonable grounds to believe" under regulation 101(2) that the lifting of restrictions could prejudice the outcome of the proceedings, namely by negatively impacting on the Prosecution's ongoing investigations and the protection of victims and witnesses, in a case where none of the alleged violations of the restrictions regime in place related to interference with the Prosecution's investigations or victims and witnesses¹⁸ [the 'Second Issue'];
 - (iii) Whether the Chamber erred by failing to assess the cumulative effect of the passage of time and the absence of indications of interference with the proceedings in its assessment of whether there had been a change in circumstances warranting the lifting or the modification of the restrictions¹⁹ [the 'Third Issue']; and

¹⁴ Decision on Mr Ngaïssona's Restrictions on Contacts and Communications in Detention, ICC-01/14-01/18-484-Conf-Exp, only available to the Ngaïssona Defence and the Registry (confidential *ex parte* redacted version, only available to the Prosecution, the Ngaïssona Defence and the Registry, notified the same day, ICC-01/14-01/18-484-Conf-Exp-Red).

¹⁵ Impugned Decision, ICC-01/14-01/18-484-Conf-Exp-Red, para. 29.

¹⁶ Defence Request for leave to appeal the "Decision on Mr Ngaïssona's Restrictions on Contacts and Communications in Detention" (ICC-01/14-01/18-484-Conf-Exp), ICC-01/14-01/18-496-Conf-Exp only available to the Ngaïssona Defence and the Registry (confidential *ex parte* redacted version, only available to the Prosecution, the Ngaïssona Defence and the Registry, notified the same day, ICC-01/14-01/18-496-Conf-Exp-Red).

¹⁷ Request, ICC-01/14-01/18-496-Conf-Exp-Red, para. 8 i).

¹⁸ Request, ICC-01/14-01/18-496-Conf-Exp-Red, para. 8 ii).

¹⁹ Request, ICC-01/14-01/18-496-Conf-Exp-Red, para. 8 iii).

- (iv) Whether the Chamber erred in determining that the current measures constitute the least restrictive measures available in light of the aim pursued²⁰ [the 'Fourth Issue'].
8. In the alternative, the Defence requests that the Chamber exercise its discretion to reformulate the Issues 'as it deems fit' in order to 'ensure proper appellate review of the [Impugned] Decision'.²¹
9. In respect of the First Issue, the Defence submits that the Chamber erred by 'simply extending pre-trial restrictions to the trial phase without examining the matter *de novo*' based on a new Prosecution request and asserts that it thus violated Regulation 101 (2) and (3) of the Regulations.²² In the Defence's view, the restrictions imposed by PTC II should have expired with the conclusion of the pre-trial proceedings.²³ The Defence asserts that the Chamber erred as a matter of procedure and law by rendering its decision without having been seized of a Prosecution request and thus disregarding the burden placed on the Prosecution to show "reasonable grounds", and denying the Defence of its right to be heard [...].²⁴ Specifically, the Defence submits that the Prosecution Observations do not provide a legal basis for renewed restrictions and that the Defence Observations 'cannot be deemed as fulfilling the requirement of [R]egulation 101(3) of the [R]egulations'.²⁵
10. With regard to the Second Issue, the Defence submits, in essence, that the Chamber erred in finding that there are 'reasonable grounds' to impose the Restrictions.²⁶ The Defence argues that the Impugned Decision relies on a 'flawed interpretation of the alleged "incidents"', which, even if true, 'lack a logical connection' with the grounds provided for in Regulation 101(2) of the Regulations.²⁷ In support of this, the Defence provides its own interpretation of

²⁰ Request, ICC-01/14-01/18-496-Conf-Exp-Red, para. 8 iv).

²¹ Request, ICC-01/14-01/18-496-Conf-Exp-Red, para. 9.

²² Request, ICC-01/14-01/18-496-Conf-Exp-Red, paras 10-12.

²³ Request, ICC-01/14-01/18-496-Conf-Exp-Red, para. 10.

²⁴ Request, ICC-01/14-01/18-496-Conf-Exp-Red, para. 11.

²⁵ Request, ICC-01/14-01/18-496-Conf-Exp-Red, para. 11.

²⁶ Request, ICC-01/14-01/18-496-Conf-Exp-Red, para. 13.

²⁷ Request, ICC-01/14-01/18-496-Conf-Exp-Red, para. 13.

the incidents cited by the Chamber, asserting that these were wrongly taken into consideration by the Chamber in order to justify the Restrictions.²⁸

11. Concerning the Third Issue, the Defence argues that, while the Chamber took the passage of time into account, it 'should not have been considered in isolation, but rather cumulatively with Mr Ngaïssona's behavio[u]r during the relevant period'.²⁹ It submits that 'the passage of time, coupled with the absence of indications of interference with the proceedings, should have led the Chamber to a more concrete – and *de novo* – assessment of whether circumstances continued to warrant contact restrictions at the trial stage'.³⁰
12. Regarding the Fourth Issue, the Defence argues, *inter alia*, that while the Chamber acknowledged the right to privacy and family life, it erred in finding that the Restrictions are the least restrictive measures available in order to protect the integrity of the proceedings and thus violates Mr Ngaïssona's rights.³¹
13. In respect of all Issues, the Defence argues that they significantly affect the fair and expeditious conduct of the proceedings and the outcome of the trial and that an immediate resolution by the Appeals Chamber may materially advance the proceedings.³²
14. On 30 April 2020, the Prosecution filed its response to the Request, requesting that it be rejected.³³ The Prosecution submits that the Issues do not constitute appealable issues under Article 82(1)(d) of the Statute but mere disagreements with the Chamber.³⁴ Additionally, it argues that the Issues do not significantly

²⁸ Request, ICC-01/14-01/18-496-Conf-Exp-Red, paras 14-16.

²⁹ Request, ICC-01/14-01/18-496-Conf-Exp-Red, para. 18.

³⁰ Request, ICC-01/14-01/18-496-Conf-Exp-Red, para. 19.

³¹ Request, ICC-01/14-01/18-496-Conf-Exp-Red, paras 21-24.

³² Request, ICC-01/14-01/18-496-Conf-Exp-Red, paras 25-43.

³³ Prosecution's Response to Confidential Redacted Version of 'Defence Request for leave to appeal the 'Decision on Mr Ngaïssona's Restrictions on Contacts and Communications in Detention'(ICC-01/14-01/18-484-Conf-Exp), ICC-01/14-01/18-496-Conf-Exp-Red, ICC-01/14-01/18-501-Conf-Exp, only available to the Prosecution, the Ngaïssona Defence and the Registry, paras 1, 24 (the 'Response').

³⁴ Response, ICC-01/14-01/18-501-Conf-Exp, paras 3-18.

affect the fair and expeditious conduct of the proceedings or the outcome of the trial and that an immediate resolution by the Appeals Chamber is not required.³⁵

II. Analysis

15. The Chamber will first pronounce itself on the requirements of Article 82(1)(d) of the Statute and then address each of the four Issues raised by the Defence.
16. In order for a request for leave to appeal to be granted, the party seeking leave to appeal should identify specific 'issues' which were dealt with in the relevant decision and which constitute the appealable issue.³⁶
17. With respect to the meaning of an appealable 'issue', the Appeals Chamber has stated:

An issue is an identifiable subject or topic requiring a decision for its resolution, not merely a question over which there is disagreement or conflicting opinion. [...] An issue is constituted by a subject the resolution of which is essential for the determination of matters arising in the judicial cause under examination.³⁷

18. Therefore, a mere disagreement or conflicting opinion cannot form an appealable issue.³⁸ Further, the definition of an appealable issue requires the parties to articulate discrete issues for the Appeals Chamber's resolution – it is generally insufficient to argue that the entirety of the Chamber's reasoning is erroneous when requesting leave to appeal.³⁹
19. Accordingly, and in light of Article 82(1)(d) of the Statute, the following requirements apply for the granting of a request for leave to appeal:

³⁵ Response, ICC-01/14-01/18-501-Conf-Exp, paras 19-23.

³⁶ Appeals Chamber, *Situation in the Democratic Republic of the Congo*, Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal, 13 July 2006, ICC-01/04-168 (the 'DRC Appeals Judgment'), para. 9.

³⁷ DRC Appeals Judgment, ICC-01/04-168, para. 9.

³⁸ DRC Appeals Judgment, ICC-01/04-168, para. 9.

³⁹ Trial Chamber V(A), *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on the joint defence request for leave to appeal the decision on witness preparation, 11 February 2013, ICC-01/09-01/11-596, para. 11; Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, Decision on three applications for leave to appeal, 29 November 2012, ICC-02/11-01/11-307, para. 70 ('[l]eave to appeal cannot be granted if the party seeking to appeal, instead of identifying appealable issues, seeks leave to litigate *ex novo* before the Appeals Chamber the entire decision'); Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on Defence Request for Leave to Appeal Decision ICC-02/04-01/15-521, 2 September 2015, ICC-02/04-01/15-529, para. 6.

- i. Whether the matter is an 'appealable issue';
 - ii. Whether the issue at hand would significantly affect:
 - a. the fair and expeditious conduct of the proceedings or
 - b. the outcome of the trial; and
 - iii. Whether, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.
20. It is not sufficient for the purposes of granting leave to appeal that the issue for which leave to appeal is sought is of general interest or that it may arise in future pre-trial or trial proceedings.⁴⁰ Further, it is insufficient that an appeal may be legitimate or even necessary at some future stage, as opposed to requiring immediate resolution by the Appeals Chamber in order to materially advance the proceedings.⁴¹
21. The criteria enumerated in paragraph 19 above are cumulative. The non-fulfilment of one of them is therefore fatal to the Request.

A. The First Issue

22. The Chamber notes at the outset that the Defence misunderstands the Impugned Decision. The Chamber recalls that it has not only taken into account the decisions by PTC II, but also the Registry Reports and the parties' submissions on the matter,⁴² it has addressed concerns raised by the Defence with regard to

⁴⁰ See Pre-Trial Chamber II, *Situation in Uganda*, Decision on Prosecutor's Application for Leave to Appeal in Part Pre-Trial Chamber II's Decision on the Prosecutor's Applications for Warrants of Arrest under Article 58, 19 August 2005, ICC-02/04-01/05-20 (unsealed pursuant to Decision on the Prosecutor's Application for Unsealing of the Warrants of Arrest, 13 October 2005, ICC-02/04-01/05-52), para. 21; Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on the Defence and Prosecution Requests for Leave to Appeal the Decision on Victims' Participation of 18 January 2008, 26 February 2008 (registered on 27 February 2008), ICC-01/04-01/06-1191, para. 11; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on the prosecution and defence applications for leave to appeal the 'Decision on the admission into evidence of materials contained in the prosecution's list of evidence', 26 January 2011, ICC-01/05-01/08-1169 (the '*Bemba* Leave to Appeal Decision'), para. 25.

⁴¹ See *Bemba* Leave to Appeal Decision, ICC-01/05-01/08-1169, para. 25.

⁴² Impugned Decision, ICC-01/14-01/18-484-Conf-Exp-Red, paras 20, 22-24.

the decisions taken in the pre-trial phase,⁴³ it has also taken recent developments into account,⁴⁴ and requested further information from the Registry.⁴⁵ On this basis, the Chamber made its own assessment and ruled on the imposition of the Restrictions anew. Such new assessment does not mean that the Chamber cannot rely on decisions or reports from the pre-trial phase, even if the Defence disagrees with those decisions and submissions.

23. The Chamber notes that the Prosecution submitted a filing requesting to uphold the Restrictions in the Prosecution Observations.⁴⁶ The Defence responded to this submission and made further comments.⁴⁷
24. Moreover, the Chamber notes that Regulation 101 of the Regulations does not prescribe how detailed a request has to be. It is of the view that the request made in the Prosecution Observations to the Ninth Registry Report satisfies the requirements of the provision.
25. Further, the Defence's claim that it was deprived of its rights to be heard and to provide its views⁴⁸ is thus erroneous. It evidently reacted to the Prosecution's Observations and even argued that these observations are insufficient to justify the continuation of the Restrictions.⁴⁹ Accordingly, the Defence had every opportunity to make submissions on this matter and made use of it. The Defence's submission on this point seems to be misplaced as it is merely grounded in a discussion of semantics in the sense that it bases the argument on the titles of the relevant filings (namely 'Prosecution Observations to the Registry Report' as opposed to 'Prosecution Request to maintain restrictions'), while it is clear from the content and substance of the filing that a new request had been made.

⁴³ Impugned Decision, ICC-01/14-01/18-484-Conf-Exp-Red, paras 22, 27.

⁴⁴ Impugned Decision, ICC-01/14-01/18-484-Conf-Exp-Red, para. 28.

⁴⁵ See Registry Observations, ICC-01/14-01/18-469-Conf-Exp-Red. See also email from the Chamber to the Detention Section, the Prosecution and Ngaissona Defence, 23 March 2020, at 11:33.

⁴⁶ Prosecution Observations, ICC-01/14-01/18-453-Conf-Exp, para. 11.

⁴⁷ Defence Observations, ICC-01/14-01/18-460-Conf-Exp.

⁴⁸ Request, ICC-01/14-01/18-496-Conf-Exp-Red, para. 11.

⁴⁹ Defence Observations, ICC-01/14-01/18-460-Conf-Exp, paras 18-22.

26. Considering the above, the Chamber finds that the First Issue does not arise from the Impugned Decision. It therefore rejects the Request with regard to the First Issue.

B. The Second Issue

27. The essence of the Defence's submissions⁵⁰ is that the Chamber based its assessment on incidents, which it assessed wrongly and which, in the Defence's view, do not support one of the grounds listed in Regulation 101(2) of the Regulations. In the Impugned Decision, the Chamber reviewed the incidents as reported by the Registry, re-affirmed certain findings by PTC II⁵¹ and found that these incidents demonstrate the accused's willingness to disregard the restrictions in place.
28. The Defence's assertion that the Chamber exercised a 'flawed interpretation' of the incidents and that 'they lack a logical connection' with the ground listed in Regulation 101(2) of the Regulations⁵² is a mere disagreement with the Chamber's reasoning and findings and, accordingly, does not constitute an appealable issue. Moreover, the Chamber recalls that these incidents were not the only reason leading to the Chamber's conclusion that there are reasonable grounds to believe that the lifting of these restrictions could prejudice the outcome of the proceedings.⁵³ The Chamber therefore also rejects the Request with regard to the Second Issue.

C. The Third Issue

29. The Defence misinterprets the Impugned Decision when arguing that 'the passage of time should not have been considered in isolation, but rather cumulatively with [the accused's behaviour]'.⁵⁴ The Impugned Decision specifically addressed first the arguments presented by the Defence with regard

⁵⁰ Request, ICC-01/14-01/18-496-Conf-Exp-Red, paras 13-16.

⁵¹ Impugned Decision, ICC-01/14-01/18-484-Conf-Exp-Red, para. 22.

⁵² Request, ICC-01/14-01/18-496-Conf-Exp-Red, para. 13.

⁵³ Impugned Decision, ICC-01/14-01/18-484-Conf-Exp-Red, paras 22-25.

⁵⁴ Request, ICC-01/14-01/18-496-Conf-Exp-Red, para. 18.

to the accused's behaviour and then the factor of passage of time.⁵⁵ It even stated that it 'has taken these factors into consideration' before making its finding.⁵⁶ Accordingly, the issue, as described by the Defence, does not arise from the Impugned Decision.

30. Additionally, the assertion that the Chamber should have done 'a more concrete – and *de novo* – assessment' given the passage of time and the accused's behaviour,⁵⁷ misconstrues the Impugned Decision (regarding the new assessment) and constitutes a mere disagreement with the Chamber (regarding the level of engagement with the issue).
31. The Chamber therefore rejects the Request with regard to the Third Issue.

D. The Fourth Issue

32. In support of the Fourth Issue, the Defence states that '[t]he Chamber erred in reaching the conclusion that the current restrictions on [the accused's] contacts are the least restrictive measures available' and proposes measures it considers proportionate instead.⁵⁸
33. The Chamber considers these arguments to be a mere disagreement with the Chamber's finding on the proportionality of the Restrictions. In examining the proportionality, the Chamber assessed the measures against Mr Ngaïssona's rights in light of the current stage of the proceedings and the risks associated with prejudicing the outcome of the proceedings, namely negatively impacting the Prosecution's ongoing investigations and protection of victims and witnesses.⁵⁹
34. The fact that this issue is a mere disagreement is further illustrated by the Defence submission that, had the Chamber conducted a *de novo* assessment of the restrictions, rather than simply maintaining all measures imposed by PTC II,

⁵⁵ Impugned Decision, ICC-01/14-01/18-484-Conf-Exp-Red, para. 24.

⁵⁶ Impugned Decision, ICC-01/14-01/18-484-Conf-Exp-Red, para. 24.

⁵⁷ Impugned Decision, ICC-01/14-01/18-484-Conf-Exp-Red, para. 19.

⁵⁸ Request, ICC-01/14-01/18-496-Conf-Exp-Red, paras 23, 24.

⁵⁹ Impugned Decision, ICC-01/14-01/18-484-Conf-Exp-Red, para. 25.

it would have avoided 'the imposition of disproportionate measures'.⁶⁰ As explained in paragraph 22 above, such assessment did take place.

35. Accordingly, the Chamber finds that the Fourth Issue does not constitute an appealable issue pursuant the Article 82(1)(d) of the Statute and rejects the Request also with regard to this issue.
36. The Chamber does also not consider that a reformulation of one or more of the Issues, as suggested by the Defence,⁶¹ would be appropriate.
37. Considering the above, the Chamber rejects the Request.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request.

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



Judge Bertram Schmitt

Presiding Judge



Judge Péter Kovács



Judge Chang-ho Chung

Dated 22 May 2020

At The Hague, The Netherlands

⁶⁰ Request, ICC-01/14-01/18-496-Conf-Exp-Red, para. 24.

⁶¹ Request, ICC-01/14-01/18-496-Conf-Exp-Red, para. 9.