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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 ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

**Joint Defence Request for Leave to Appeal the “Decision on the Joint
Defence Request for Review of the Registrar’s 24 November 2022 Decision
on Salary Adjustment,” 21 December 2022, ICC-01/14-01/18-1711**

Source: Defence for Mr. Alfred Rombhot Yekatom & Defence for Mr. Patrice-
Édouard Ngaïssona

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

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INTRODUCTION

1. Pursuant to Article 82(1)(d) of the Statute, Rule 155 of the Rules of Procedure and Evidence, and Regulation 65 of the Regulations of the Court, the Defence for Mr. Alfred Rombhot Yekatom and the Defence for Mr. Patrice-Édouard Ngaïssona ('Defence') hereby respectfully request leave to appeal Trial Chamber V's "Decision on the Joint Defence Request for Review of the Registrar's 24 November 2022 Decision on Salary Adjustment ('Decision').¹
2. The Defence seeks leave to appeal the Decision with respect to the following issues:

Whether a complaint needs to be individualized and concrete in order to trigger the judicial review mechanism under Regulation 83(4) of the RoC and Regulation 135(2) of the RoR, and if so, does a complaint containing specific calculation of fees with a resulting figure, sent and signed by team members in their individual capacity meet these criteria.

Whether the LAP or some of its terms as adopted by the ASP are binding on the Registrar and the Chamber in light of the hierarchy of norms codified at article 21 of the Statute. This further raises the sub-issues of whether the Registrar through regulation 133 RoR has the power to delegate and/or assign responsibility to the ASP for exercising the regulatory powers and undertaking the duties assigned to the Registry by the Statute and the RPE, including regulating the management of the resources allocated to the Defence.

Whether when assessing the sufficiency of the resources allocated to the Defence, it is reasonable for a Chamber to limit its finding to whether there has been a violation of the rights of the accused instead of also considering any latent or imminent risks of the rights of the accused which the Chamber can yet safeguard.

PROCEDURAL HISTORY

3. On or around 10 November 2022, members of both the Yekatom and Ngaïssona Defence teams ('Applicants') wrote individual letters to the Registry requesting

¹ [ICC-01/14-01/18-1711](#).

a change in the calculation of their remuneration within the existing “Legal Aid Policy” (‘LAP’).²

4. On 24 November 2022, the Registry responded to all letters with a single letter addressed to all Defence team members stating that it was bound by the terms of the LAP, which clearly circumscribed the limits of Defence teams remuneration (‘Registrar Decision’).³
5. On 5 December 2022, both the Yekatom and the Ngaïssona Defence filed before the Chamber a Joint Request for review of the Registrar’s 24 November 2022 Decision titled “Registrar’s reply to the request for ‘Salary adjustment’” pursuant to regulation 83(4) of the Regulations of the Court and regulation 135(2) of the Regulations of the Registry (‘Joint Request’),⁴ with a confidential Annex containing a sample of five Applicants complaint to the Registrar.⁵
6. On 16 December 2022, the Registry submitted observations on the Joint Request, arguing that the Joint Request was inadmissible as it did not fall within the scope of regulation 83(4) of the Regulation of the Court or regulation 135(2) of the Regulation of the Registry.⁶
7. On 21 December 2022, Trial Chamber V issued the Decision which rejected the Joint Request.⁷
8. On 13 December 2022, Trial Chamber V suspended the deadlines during the judicial recess, *i.e.* from 16 December 2022 until 9 January 2023.⁸

APPLICABLE LAW

² [ICC-01/14-01/18-1688](#).

³ See ICC-01/14-01/18-1688-Conf-AnxB, (‘Annex B’).

⁴ [ICC-01/14-01/18-1688](#).

⁵ ICC-01/14-01/18-1688-Conf-AnxA, (‘Annex A’).

⁶ [ICC-01/14-01/18-1703](#).

⁷ [ICC-01/14-01/18-1711](#).

⁸ Email from Trial Chamber V to all Parties and Participants sent on 13 December 2022, at 10:39.

9. Article 82(1)(d) of the Statute states that:

(1) Either party may appeal any of the following decisions in accordance with the Rules of Procedure and Evidence:

(d) A decision that involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

10. 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.⁹

11. 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.¹⁰

12. Therefore, a mere disagreement or conflicting opinion cannot form an appealable issue.¹¹

SUBMISSIONS

I. The Issues constitutes an ‘appealable issue’.

i) The issue of the Procedural requirements

13. The Defence submits that there is an appealable issue arising from the Chamber’s finding that “the [Registrar] Decision does not concern an

⁹ [ICC-01/14-01/18-525](#), para. 16, citing *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](#), para. 9.

¹⁰ [ICC-01/14-01/18-525](#), para. 17, citing *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](#), para. 9.

¹¹ [ICC-01/14-01/18-525](#), para. 18, citing *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](#), para. 9.

individualised and concrete dispute on the scope of legal assistance as defined in Regulation 83 of the Regulations, the calculation and payment of fees or the reimbursement of expenses within the remuneration regime established in the LAP. Rather, it responds to the defence’s general requests to amend the terms of the LAP.”¹²

14. The issue which arises from this finding is whether a complaint needs to be individualized and concrete in order to trigger the judicial review mechanism under Regulation 83(4) of the RoC and Regulation 135(2) of the RoR, and if so, does a complaint containing specific calculation of fees with a resulting figure, sent and signed by team members in their individual capacity meet these criteria.¹³
15. Firstly, the Trial Chamber erred in law in considering that regulation 83 RoC and 135 RoR are limited to “individualised disputes”, as no such legal requirement exists. Moreover, neither the *Al Hassan* decision, nor the *Gaddafi* decision, the sole legal authorities cited by the Registry, articulate such a restriction.¹⁴ In fact, the legal requirement that the dispute be “individualised” is absent from *any* judgment cited in the Decision.¹⁵
16. Secondly, were such a restriction even to exist, the Chamber did not take into account factors demonstrating that this requirement was met. The initial complaints were sent in an individual capacity by each team member and were referred to in the Joint Request¹⁶ some of which were annexed.¹⁷ Therefore, even

¹² [ICC-01/14-01/18-1711](#), para. 5.

¹³ See [ICC-01/14-01/18-1688](#), fn. 9.

¹⁴ [ICC-01/14-01/18-1703](#), para. 10, *Prosecutor v. Gaddafi*, Decision on the Defence Request for Review of the Registrar’s Decision on Legal Aid, [ICC-01/11-01/11-613](#), 24 August 2015, para. 5; *Prosecutor v. Al Hassan*, Decision on the Defence’s urgent request for judicial review, [ICC-01/12-01/18-2443](#), 15 December 2022, para. 4.

¹⁵ [ICC-01/14-01/18-1711](#), para. 5, footnote 7.

¹⁶ [ICC-01/14-01/18-1688](#), fn. 9.

¹⁷ [ICC-01/14-01/18-1688-Conf-AnxA](#).

if “individualised disputes” were a criteria, the Chamber would have failed to exercise its discretion judiciously¹⁸.

17. Thirdly, the Applicants’ complaints were specific. Each of those demands contained specific calculations of fees depending on the Applicant’s position or title, these calculations were made in accordance with the principles of the LAP. None of the applications departed from the terms of the LAP or suggested a general change to it. On the contrary, they consist of an interpretation of its terms and the application of all principles mentioned within it.
18. It was the Registrar’s choice not to address the merits of the team members’ individual requests, and instead to provide a Decision which reflects the politics and budgetary constraints of the Court rather than the terms of the LAP and his responsibilities under the Statute. The Chamber treating those demands together as if it was a general demand was a mischaracterisation. Within the Joint Request the Defence teams thoroughly argued against such a position.¹⁹
19. It was thus unreasonable for the Trial Chamber to consider that these choices by the Registrar made it so that the Registrar Decision was not subject to judicial review and/or that the Applicants’ complaint were insufficient to trigger such a decision in spite of there individual nature and content. This would amount to the Registrar being given the power to decide which of their decisions are subject to judicial review and/or to empty regulation 135 of the RoR and regulation 83(4) of the RoC of their purpose, namely to provide a mechanism in which fee calculations emanating from LAP remuneration regime can be contested.

¹⁸ Prosecutor v. Ntaganda, Public redacted version of Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled ‘Judgment’, [ICC-01/04-02/06-2666-Red](#), 30 March 2021, para. 46.

¹⁹ See in particular [ICC-01/14-01/18-1688](#), paras. 26 to 52

20. The Chamber further failed to specify which terms of the LAP the “defence’s general requests” were seeking to modify. This should have been specified since the Chamber considered that the alleged amendment of the LAP that the Defence was seeking was so general that it led to the rejection of the Joint Request. Moreover, in failing to specify this, the impugned decision fails to provide sufficient reasoning so that the decision can be reviewed.²⁰
21. This issue arises from the Decision which found that the Registrar’s Decision did not concern an individualised and concrete dispute. The issue is therefore an appealable issue and not just a mere disagreement since it was on the basis that the requests are not individualised and concrete dispute that the Chamber rejected the Joint Request.

ii) The issue of the Registry’s competence

22. At paragraph 4 of the Decision, the Trial Chamber ruled that: “any amendments to the terms of the LAP, including the remuneration regime, fall within the purview of the ASP. Accordingly, the Chamber is of the view that the Registry indeed ‘remains bound by the provisions of the current [LAP].’”
23. The issue which arises from this ruling is whether the LAP or some of its terms as adopted by the ASP are binding on the Registrar and the Chamber in light of the hierarchy of norms codified at article 21 of the Statute. This further raises the sub-issues of whether the Registrar through regulation 133 RoR has the power to delegate and/or assign responsibility to the ASP for exercising the regulatory powers and undertaking the duties assigned to the Registry by the Statute and the RPE, including regulating the management of the resources allocated to the Defence.

²⁰ *Prosecutor v. Lubanga*, AC, Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled "First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81", [ICC-01/04-01/06-773](#), 14 December 2006, para. 20.

24. The issue arises from the Decision of the Chamber which relied upon Regulation 133 RoR in a way which precludes application of the norms of the Court.
25. It is the Defence's position that the content of the Applicant's complaints does not suggest a change of the terms of the LAP, but merely its application with the correct interpretation. In the alternative, it is the Defence's position that the Registry is first bound by its responsibilities under the Rome Statute and the RPE and then has "the discretion [...] to follow the guidelines laid down in the [LAP]".²¹
26. The Chamber thus erred in law in finding that the Registry is bound by the LAP and/or certain strict terms of the LAP without consideration of the Rome Statute, the RPE, the interest of justice, or even other principles contained in the LAP. The Chamber further erred in procedure as it provided no reason or interpretation to the disposition it used to make such a ruling, *i.e.* regulation 133 RoR, despite going against the jurisprudence of the court.²²
27. It also should be noted that the "success" noted by the Chamber²³ and the corresponding resolution passed at the ASP does not consist of a change of the terms of the LAP, but an acknowledgment by the State Parties of the power of the Registrar to partly give effect to the complaints of the Applicants.²⁴ The Defence notes that the ASP Resolution provides no legal basis for concluding

²¹ *Prosecutor v. Bemba et al.*, TC VII, Decision on the Defence applications for judicial review of the decision of the Registrar on the allocation of resources during the trial phase, [ICC-01/05-01/13-955](#), 21 May 2015, para. 37.

²² See for example *Prosecutor v. Bemba et al.*, TC VII, Decision on the Defence applications for judicial review of the decision of the Registrar on the allocation of resources during the trial phase, [ICC-01/05-01/13-955](#), 21 May 2015, para. 37.

²³ [ICC-01/14-01/18-1711](#), para. 6, citing Registry Observations, [ICC-01/14-01/18-1703](#), paras 19-20.

²⁴ ICC-ASP/21/Res.2, para. 92.

that the Registry was previously precluded from adopting such measures²⁵ notwithstanding the Registry's characterisation as such.²⁶

28. This issue was essential to the Decision, and materially affects it, as it led the Chamber to find no error in the Registrar's decision. Furthermore, the resolution of the issue is essential for the correct determination of the Defence Joint Request.

iii) The issue of the rights of the accused

29. In the Decision, the Chamber ruled that "the Chamber has no reason to believe that the accused's rights *have been* affected by the current remuneration regime of defence team members under the LAP."²⁷
30. The issue arising from this finding is whether when assessing the sufficiency of the resources allocated to the Defence, it is reasonable for a Chamber to limit its finding to whether there has been a violation of the rights of the accused instead of also considering any latent or imminent risks of the rights of the accused which the Chamber can yet safeguard.
31. Further, the Chamber did not indicate in its decision how it took into consideration the principle of equality of arms or the right of the accused to a fair trial when reaching its finding. The Chamber did not indicate why it disregarded the findings of two expert reports commissioned by the Registry

²⁵ ICC-ASP/21/Res.2, para. 92: "92. Requests the Court to consider interim measures, within existing resources in the legal aid budget, to the benefit of members of defence and victims' teams, and to continue its efforts in the reform of the legal aid system and to present, based on further consultations with States Parties and all relevant stakeholders, another proposal for reform of the legal aid policy for external defence and victims' teams, in accordance with the mandate, taking account of the cost constraints and ensuring that the reform of the Court's legal aid system can be funded within existing resources. Full attention should be paid to the status of the members of the defence and victims' teams, in order to address their conditions of service, taking into account the current economic realities".

²⁶ See, [ICC-01/14-01/18-1703](#), para. 19 "The Assembly has – by way of resolution – as a result, agreed that the Registrar may "consider interim measures, within existing resources in the legal aid budget, to the benefit of members of defence and victims' teams", 23 pending the finalisation of the legal aid policy reform.".

²⁷ [ICC-01/14-01/18-1711](#), para. 7 [emphasis added].

and the ASP²⁸ which clearly established the unsustainability of the current remuneration regime of defence team members acting before the Court. The Chamber did not address the changes in the economic circumstances including the high inflation rates, which place undue hardship on defence team members and which led to a five day strike by defence support staff.²⁹

32. This issue arises from a finding of the Decision which materially affected its outcome. Indeed, would the assessment of the Chamber have been broader, it would have considered whether the rights of the accused were to be imminently affected, the Chamber would potentially not have procedurally rejected the Joint Request after conducting such an assessment. Therefore, this issue is essential to the correct determination of the Joint Request.

33. These issues do not constitute mere disagreement with the Decision. On the contrary, these issues are discrete, distinct, and identifiable. They are determinative of whether the Chamber erred in law, procedure, or ‘failed to exercise its discretion judiciously’.³⁰ They each arise from the Decision of the Chamber and were each material to its outcome. The issues are therefore appealable issues.

II. The Issues significantly affect the fair and expeditious conduct of the proceedings.

34. As has been previously held by the Appeals Chamber:

The term "fair" in the context of article 82 (1) (d) of the Statute is associated with the norms of a fair trial, the attributes of which are an inseverable part of

²⁸ See [ICC-01/14-01/18-1688](#), paras. 42 and 43 referring to Assessment of the ICC’s Legal Aid System, Richard J. Rogers, 5 January 2017, (available at <https://www.icc-cpi.int/sites/default/files/itemsDocuments/legalAidConsultations-LAS-REP-ENG.pdf>) and Independent Expert Review of the International Criminal Court and the Rome Statute System Final Report – 30 September 2020, 09 November 2020, ICC-ASP/19/16, (available at https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP19/IER-Final-Report-ENG.pdf).

²⁹ See [ICC-01/14-01/18-1688](#), para. 44.

³⁰ *Prosecutor v. Ntaganda*, Public redacted version of Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled ‘Judgment’, [ICC-01/04-02/06-2666-Red](#), 30 March 2021, para. 46, and references cited therein.

the corresponding human right, incorporated in the Statute by distinct provisions of it (articles 64(2)³¹ and 67(1)³²) and article 21(3)³³].³⁴

35. The nexus between the issues and the fair conduct of these proceedings is clear. Whether taken together or apart, the issues all concern the allocation of resources the Defence teams and consequently the right of the accused to be provided with an effective defence as enshrined in the Rome Statute.
36. Indeed, the accused is entitled to have adequate time and facilities for the preparation of the defence³⁵ and to “examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her”.³⁶
37. The nexus between the issues and the fairness of the proceedings is further evidenced as the resources allocated to the Defence are protected by the principle of equality of arms.³⁷ The violation of this principle is in and of itself a violation of the right of the accused, but more so, its perpetual violation can translate in an irremediable violation of the fairness of the proceedings.
38. With regard to the binding nature of the LAP, the impact of the Decision is specifically to place the LAP above considerations of fairness and expeditiousness of the proceedings.

³¹ Article 64(2) states, ‘The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights.’

³² Article 67(1) states in relevant part, ‘In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing[.]’

³³ Article 21(3) states in relevant part, ‘The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights.’

³⁴ *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](#), para. 11.

³⁵ Rome Statute, article 67(1)(b).

³⁶ Rome Statute, article 67(1)(e).

³⁷ *Prosecutor v. Ntaganda*, Reasons for Review of Registrar's Decision on Defence resources”, [ICC-01/04-02/06](#), paras 43 and 52.

39. The expeditiousness of the proceedings is also affected by the issues. Indeed, the questions of adequate resources to Defence teams and the accrued difficulties arising from the current economical context have led support staff and/or counsels in different Defence teams to involved themselves in a multitude of time consuming and stressful discussions and representations before the Registry and the Legal Aid Policy Reform, alongside making representation before embassies and the ASP and going as far as taking collective action, protesting during a five day strike for better labour conditions.
40. Further departures of team members due to the current working conditions and the lack of improvement on these issues in the recent years will unduly affect the speed of the Defence ongoing preparation in the course of these proceedings through its loss of institutional knowledge and memory.
41. Moreover, permeating all these issues is the scarce reasoning provided by the Trial Chamber to support its decision. Indeed, as argued at paragraphs 20 and 31 of the present request, the Decision addresses or mentions few of the legal arguments proposed by the Defence and none on the matters of the competence of the Chamber, of the authority of the LAP, or on the effect of its current application to the rights to an effective defence and to a fair trial, all three of these subjects being imperative to the Joint Request.

III. The Issues significantly affect the outcome of the proceedings.

42. The Defence submits these issues would significantly affect the outcome of the proceedings as it has bearing on the ability of Counsel to provide an effective Defence.
43. Firstly, each issue is standing alone is sufficient to impact upon the Defence capacity to have resources for adequate preparation before the Registry and before the Chamber.

44. Secondly, as it stands, the situation represents an imminent and concrete risk of irreparably affecting the outcome of the trial by creating a situation in which the Defence is unable to provide adequate time and resources to the representation of both accused, while in contrast, the Prosecution's ability to retain its personnel and prepare its case remains intact.
45. Indeed, as mentioned in the Joint Request, the current situation is not one of stagnation, but one of rapid deterioration, partly due to the constant inflation.
46. Provided the very limited means granted to the Defence, there can be very little overlap in the analysis of evidence between team members. As a result, losing the proficiency of a team member on a specific count of the case or a set of evidence would directly impact the Defence capacity to adequately examine witnesses, to adequately present their case, and to react to new developments.
- IV. An immediate resolution of the Issue would materially advance the proceedings.**
47. An immediate resolution of the issues would materially advance the proceedings. First, it would eliminate the risks of further litigation regarding the current application of the LAP as these issues concern a latent risk which can only worsen with time. Should the resources allocated to the Defence and the remuneration of its members remain unchanged, while both the inflation and the remuneration of Prosecution staff continue to increase, the situation will only further materialize in a struggle for the Defence to retain and motivate staff members, and to hire qualified and experienced staff. All of which will lead to further disruptions in the Defence preparation. These consequences are not matters that can be rectified *post facto* or at an appeal stage.
48. Furthermore, in the event the Appeals Chamber would reverse the Decision and give right to the Defence's arguments, the future effects of the Decision on the expeditiousness of the proceedings would be removed. As for fair trial

rights, not only would such a resolution prevent irremediable harm, but it would in fact result in their strengthening.

49. Also, the “success” at the ASP noted by the Chamber,³⁸ is of limited impact as budgetary constraints still prevail over consideration of equality of arms. Further, it has yet to translate into a concrete and permanent change for the Defence. Therefore, the resolution of the Applicants’ complaints, which ultimately concern the fair trial rights of the Accused cannot be left to a body which is unlikely to bring immediate and comprehensive resolution.
50. Finally, resolution of the issue would bring legal certainty as to the remuneration regime of the Defence. Indeed, Regulation 133 RoR is a creation of the Registry and the Presidency approves these regulations.³⁹ Regulation 133 RoR is not part of a resolution of the ASP nor a term of a treaty. The RoR are ‘secondary’ or ‘delegated’ legislation created to give detail and effect to more primary norms that flow from the Rome Statute. The RoR cannot assume powers outside those given to the Registry nor can it shift obligations that are the responsibility of the Registry to other bodies or organisations. In other words, Regulation 133 is not a legal mechanism that has the power to bootstrap an ASP resolution or parts of a resolution to have binding force that modify other legal instruments, norms of the Court, or obligations of the Registry where other instruments or norms have primacy over the RoR.
51. It is also worth noting that the Registry’s obligations under Rule 20(1) RPE are effectively approved by the ASP. To the extent that ASP consideration⁴⁰ of

³⁸ [ICC-01/14-01/18-1711](#), para. 6, citing Registry Observations, ICC-01/14-01/18-1703, paras 19-20.

³⁹ Rule 14(1) RPE.

⁴⁰ See Article 52(3) of the Rome Statute. The ASP effectively acquiesces to reforms of the RoC.

amendment imprints a legal norm with binding force,⁴¹ the RoC have this quality whereas the RoR do not.⁴²

52. In any case, the Trial Chamber provided no reasoning as regards the principles of international institutional law or public international law (notably the law of the interpretation of treaties) that could support such a conclusion that Regulation 133 can – without more – alter the Registry’s obligations such as regulating the management of the resources allocated to the Defence; these obligations flow from multiple legal sources and not just the RoR.
53. Immediate resolution of the issues would thus materially advance the proceedings, in that it would eliminate the risk that any aspects of the trial proceedings be invalidated as a consequence of the Decision, and prevent future causes of delay.

RELIEF SOUGHT

54. In light of the above, the Defence respectfully requests that Trial Chamber V:

GRANT leave to appeal the Decision with respect to the issues listed in paragraph 2.

RESPECTFULLY SUBMITTED ON THIS 16TH DAY OF JANUARY 2023⁴³

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⁴¹ [ICC-01/14-01/18-1711](#), para. 4 (“In light of the above, the Chamber notes that any amendments to the terms of the LAP, including the remuneration regime, fall within the purview of the ASP. Accordingly, the Chamber is of the view that the Registry indeed ‘remains bound by the provisions of the current [LAP]’”).

⁴² The RoR are themselves a creation of secondary legislation. *See* Rule 14(1) RPE.

⁴³ The Yekatom Defence is grateful to Legal Intern Mr. Tobie Raphael Godue for his precious assistance in the drafting of this filing.