

PARTLY DISSENTING OPINION OF JUDGE ALAPINI-GANSOU

1. I respectfully disagree with the decision of the majority of the judges of Pre-Trial Chamber I (the ‘Majority’) to reject the ‘Application on behalf of the Government of the Union of the Comoros for Leave to Appeal the “Decision on the Application for Judicial Review by the Government of the Comoros” of 16 September 2020’.¹ The Majority rejected both issues raised by the Comoros, finding that the First Issue was not an ‘appealable issue’ and that the Second Issue did not arise from the Impugned Decision,² therefore not considering them further.

2. For the reasons that follow, I believe that the Chamber should have granted the Comoros leave to appeal the Impugned Decision, as both issues raised fulfil the criteria set out in article 82(1)(d) of the Statute, namely: (i) they are appealable issues, (ii) which would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and (iii) their immediate resolution by the Appeals Chamber might have materially advanced the proceedings.

I. Requirements of article 82(1)(d) of the Statute

3. I note that the following criteria need to be met for an application for leave to appeal under article 82(1)(d) of the Statute to be granted: (a) the impugned decision must involve an ‘appealable issue’; (b) the issue at hand could significantly affect either: (i) the fair and expeditious conduct of the proceedings, or (ii) the outcome of the trial, and (c) in the opinion of the pre-trial chamber, an immediate resolution by the Appeals Chamber could materially advance the proceedings. Whilst criteria (a), (b) and (c) are cumulative, the two requirements under (b) are in the alternative, which means that if it is demonstrated that the issue could significantly affect the fair and expeditious conduct of the proceedings, there is no need to show that it would significantly affect the outcome of the trial.

¹ 22 September 2020, [ICC-01/13-112](#).

² According to the Majority, the Second Issue had already been litigated and settled by the Appeals Chamber in its [Judgment on the appeal of the Prosecutor against Pre-Trial Chamber I’s “Decision on the ‘Application for Judicial Review by the Government of the Union of the Comoros”](#)”, 2 September 2019, ICC-01/13-98 (the ‘Appeals Chamber’s Judgment’).

A. Appealable issue under article 82(1)(d) of the Statute

4. Preliminarily, I recall that, according to the Appeals Chamber, an appealable issue is constituted by a subject the resolution of which ‘is essential for the determination of matters arising in the judicial cause under examination’.³ For an issue to constitute the subject of an appeal, it cannot be merely a question over which there is disagreement or conflicting opinion. It must be apt to ‘significantly affect’ either (i) ‘the fair and expeditious conduct of the proceedings’, or (ii) ‘the outcome of the trial’.⁴

5. Regarding the First Issue, I disagree with the Majority’s finding that the submissions made by the Comoros are no more than a disagreement with the Chamber’s determination. The Majority states that the decision to not request reconsideration was based on the guidance received from the Appeals Chamber, and that, in stating that the Chamber erred in its decision, the Comoros is merely disagreeing with the Chamber’s determination.⁵ I note that the Chamber’s decision not to request reconsideration was not based on the guidance received from the Appeals Chamber, but on the lack thereof. The Chamber specifically stated in the Impugned Decision that it was ‘*unclear* to the Chamber, based on the guidance received from the Appeals Chamber, whether and to what extent it may request the Prosecutor to correct [the identified] errors’.⁶ It further highlighted that ‘the current jurisprudence of the Appeals Chamber does not establish with sufficient clarity the exact distribution of prerogatives between the Prosecutor and the pre-trial chamber in article 53(3)(a) proceedings’.⁷ It is for these reasons that the Chamber then decided not to request the Prosecutor to reconsider her decision.

6. The Majority’s determination that the First Issue is a mere disagreement with the Chamber’s determination is inconsistent with the Chamber’s own Impugned Decision. In the Impugned Decision, the Chamber made no pronouncement and no finding as to whether it had the power to request reconsideration in the circumstances at hand. In other words, it did not address the legal question now raised by the Comoros under the First Issue. The Comoros’

³ 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, para. 9 (the ‘Appeals Chamber Article 82(1)(d) Judgment’).

⁴ [Appeals Chamber Article 82\(1\)\(d\) Judgment](#), ICC-01/04-168, para. 10.

⁵ Majority Decision, para. 10.

⁶ [Impugned Decision](#), ICC-01/13-111, paras 107, 110 (emphasis added).

⁷ [Impugned Decision](#), ICC-01/13-111, para. 111.

submissions cannot be a mere disagreement with the Chamber's determination, when no such determination was made.

7. Moreover, the Prosecutor's submission that it is 'evident from the plain words of article 53(3)(a)' that the Chamber has discretion whether to request reconsideration is unpersuasive.⁸ A plain reading of article 53(3)(a) of the Statute does not answer the question of whether the Chamber enjoys such discretion *after having decided* to start the process of reconsideration and after concluding that the Prosecutor has committed errors which materially affected her decision.

8. Furthermore, I note that in its first 'Decision on the request of the Union of the Comoros to review the Prosecutor's decision not to initiate an investigation', rendered in 2015, the Chamber held that '[u]pon review, the Chamber *must* request the Prosecutor to reconsider her decision not to investigate *if it concludes that the validity of the decision is materially affected by an error*'.⁹ However, the Chamber in the Impugned Decision decided not to request reconsideration after concluding that the validity of the Prosecutor's final decision is materially affected by several errors and abuses, due to uncertainties arising from the Appeals Chamber's Judgment.

9. The First Issue bears upon the very effectiveness of article 53(3)(a) of the Statute, the rights of States (and the Security Council, as the case may be) under this provision, the relevant prerogatives of the Prosecutor and the powers of the pre-trial chamber, issues over which the lack of clarity is the very reason the Chamber decided not to request reconsideration.

10. In addition, I find the Prosecutor's submission that the First Issue is simply an attempt by the Comoros to 'seek a different decision on precisely the same question considered at first instance' erroneous.¹⁰ The Prosecutor submits that the issue at hand is not an appealable issue, because the Chamber's conclusion is based on an exercise of its statutory discretion.¹¹ On the contrary, the First Issue questions the scope of this very statutory discretion once the pre-trial chamber has started the reconsideration procedure. Such an issue, as stated above, has not yet been clarified in these proceedings or by this Court and its resolution is essential in the present proceedings as the correctness of the Chamber's decision not to request reconsideration –

⁸ [Prosecutor's Response](#), ICC-01/13-114, para. 14.

⁹ [ICC-01/13-34](#), para. 12 (emphasis added).

¹⁰ [Prosecutor's Response](#), ICC-01/13-114, para. 13.

¹¹ [Prosecutor's Response](#), ICC-01/13-114, para. 14.

despite having found that the Prosecutor failed to genuinely reconsider her decision – depends on whether the Chamber had the discretion to do so.

11. With regard to the Second Issue, I respectfully note that the Majority’s finding that the Second Issue is not an appealable issue because it has already been decided by the Appeals Chamber is based on a misguided assessment of the issue at hand.¹²

12. The issue before the Appeals Chamber in 2019 was whether the Prosecutor, when reconsidering her decision, was bound by the Chamber’s conclusions of law or fact formulated in its request for reconsideration.¹³ The issue arising from the Impugned Decision is not whether the Prosecutor is bound to follow the Chamber’s directions. This was indeed settled by the Appeals Chamber.¹⁴ Rather, the question is what is the exact distribution of prerogatives between the Chamber and the Prosecutor where questions of law overlap with questions of fact or with the balancing of the factors relevant to the gravity assessment:¹⁵ (i) may the Chamber review how the Prosecutor has applied the law to the facts, especially where the application of the ‘reasonable basis to believe standard’ is inconsistent with the Chamber’s interpretation of the standard;¹⁶ (ii) may the Chamber request the Prosecutor to reconsider her decision if she fails to attach weight to factors relevant to the gravity assessment,¹⁷ or assigns them limited or no weight based on erroneous consideration;¹⁸ and (iii) may the Chamber request reconsideration anew when, following reconsideration, the Prosecutor commits new errors.¹⁹

13. Once again, the Majority’s determination that the Second Issue does not arise from the Impugned Decision is contradictory to the Chamber’s own Impugned Decision. The lack of clarity surrounding the questions mentioned above, all of which are subsumed under the

¹² Majority Decision, paras 11-12.

¹³ [Appeals Chamber’s Judgment](#), ICC-01/13-98, para. 5; Pre-Trial Chamber I, [Decision on the Prosecutor’s request for leave to appeal the “Decision on the ‘Application for Judicial Review by the Government of the Union of the Comoros”](#), 18 January 2019, ICC-01/13-73, paras 46-47 (the ‘2019 Decision Granting Leave to Appeal’).

¹⁴ [Appeals Chamber’s Judgment](#), ICC-01/13-98, para. 2.

¹⁵ *For example*, what is the distribution of prerogatives between the Chamber and the Prosecutor when the Prosecutor decides to assign limited weight to a factor relevant to the gravity assessment based on an interpretation of the evidentiary standard which is incorrect and contradictory to the Chamber’s interpretation of said standard; *see* [Impugned Decision](#), ICC-01/13-111, para. 109.

¹⁶ [Impugned Decision](#), ICC-01/13-111, paras 107-108.

¹⁷ [Impugned Decision](#), ICC-01/13-111, paras 64-66, 78-80.

¹⁸ *For example*, considerations which are not relevant to the gravity requirement or to the factor concerned, or which are contradictory to the law as interpreted by the Chamber; *see* [Impugned Decision](#), ICC-01/13-111, paras 39, 44-45, 68-71, 82, 91-93.

¹⁹ [Impugned Decision](#), ICC-01/13-111, paras 38, 60, 67, 68-70, 71, 77, 81, 95-97.

Second Issue, is the very reason why the Chamber decided in the way that it did.²⁰ The Second Issue does not only arise from the Impugned Decision, but lies at its heart.

14. As explained below, I believe that these questions not only amount to appealable issues, but also significantly affect the fair and expeditious conduct of the proceedings. Their resolution by the Appeals Chamber would have materially advanced the proceedings, bringing legal certainty to these and future proceedings, preserving their integrity and guaranteeing the respect for fair trial rights.

B. The issues significantly affect the fair conduct of the proceedings

15. The second criterion set out in article 82(1)(d) of the Statute is that an appealable issue must significantly affect the fair and expeditious conduct of the proceedings. In this sense, the Appeals Chamber has associated the term ‘fair’ in article 82(1)(d) of the Statute with the norms of a fair trial, the attributes of which are an inseverable part of the corresponding human right.²¹ The principle of fairness of proceedings is a fundamental element in criminal proceedings and it is incorporated in the Statute in many relevant provisions.²²

16. In addition, I recall that the Appeals Chamber has previously found that a ‘breach of or deviation from the rules of a fair trial at the pre-trial stage of the proceedings may have implications on the proceedings and may affect the outcome of the trial’ and, therefore, the ‘principles of a fair trial are not confined to trial proceedings but extend to pre-trial proceedings as well as the investigation of crime’.²³

17. The Statute imposes a strict legal framework on the Prosecutor when deciding to initiate an investigation. Such decision is subject to judicial scrutiny and finds limitations when facing internationally recognised human rights,²⁴ especially the rights of victims, which have been

²⁰ [Impugned Decision](#), ICC-01/13-111, paras 107, 110.

²¹ [Appeals Chamber Article 82\(1\)\(d\) Judgment](#), ICC-01/04-168, para. 11. *See* article 7(1)(d) of the African Charter on Human and Peoples’ Rights, 21 October 1986, which reads ‘1. Every individual shall have the right to have his cause heard. This comprises: [...] d. The right to be tried within a reasonable time by an impartial court or tribunal’; The American Convention on Human Rights, “Pact of San José, Costa Rica”, 18 July 1978, 1144 United Nations Treaty Series 17955, which provides in article 8(1): ‘Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal’.

²² Notably articles 64(2) and 67(1); *see also* Pre-Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo, Decision on the Prosecutor’s application for leave to appeal Pre-Trial Chamber III’s decision on disclosure*, 25 August 2008, ICC-01/05-01/08-75, para. 13.

²³ [Appeals Chamber Article 82\(1\)\(d\) Judgment](#), ICC-01/04-168, para. 11.

²⁴ *See* Article 21(3) of the Statute; [Dissenting Opinion of Judge Luz del Carmen Ibáñez Carranza to the Majority’s decision dismissing as inadmissible the victims’ appeals against the decision rejecting the authorisation of an investigation into the situation in Afghanistan](#), 6 March 2020, ICC-02/17-137-Anx-Corr, para. 27 (noting that

underlined several times by this Chamber in its jurisprudence.²⁵ Article 53(3)(a) of the Statute provides that the referring State Party (or Security Council, as the case may be) is able to challenge the Prosecutor’s decision not to investigate, ensuring that there is a procedural balance between the Prosecutor’s powers during this early phase of the proceedings and the State Party’s (or Security Council’s) interest in seeing such an investigation being conducted. This article, as any other article in the Statute, ‘must be interpreted as well as applied in accordance with internationally recognised human rights. Human rights underpin the Statute; every aspect of it, including the exercise of the jurisdiction of the Court’.²⁶ This means that in the interpretation and application of article 53 of the Statute, both the Prosecutor and the Chamber are mandated to respect the internationally recognised human rights of victims, especially the rights of victims to know the truth, to have access to justice and to request reparations.

18. I note that the First Issue bares upon the Chamber’s powers under article 53(3)(a) of the Statute to reject a request for reconsideration, after having found that the Prosecutor’s reconsideration was tainted with errors, upon the object and purpose of article 53(3)(a) of the Statute and upon the rights of States Parties (or the Security Council, as the case may be) to challenge a decision of the Prosecutor not to proceed with an investigation. Therefore, the First Issue directly impacts on the fairness of the proceedings towards the referring State Party which has decided to exercise its procedural right under article 53(3)(a) of the Statute to challenge the Prosecutor’s decision not to initiate an investigation. It equally directly impacts on the rights of victims as described above.

19. I further note that one of the issues for which the Chamber granted the Prosecutor leave to appeal in its 2019 ‘Decision on the Prosecutor’s request for leave to appeal the “Decision on the ‘Application for Judicial Review by the Government of the Union of the Comoros”’, in these very proceedings, is highly similar to the Second Issue, in that both affect the balance between the Prosecutor’s margin of appreciation and the right of a State Party to challenge the

‘[t]he Statute is a treaty that grants this Court jurisdiction over atrocious crimes that entail serious violations of human rights. That is the *raison d’être* of article 21(3) of the Statute. It binds the Court to be consistent with all internationally recognised human rights in its interpretation and application of the law’).

²⁵ [Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19\(3\) of the Statute”](#), 6 September 2018, ICC-RoC46(3)-01/18-37, paras 87-88; [Decision on the “Application for Judicial Review by the Government of the Union of the Comoros”](#), 15 November 2018, ICC-01/13-68, para. 120.

²⁶ Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, [Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19 \(2\) \(a\) of the Statute of 3 October 2006](#), 14 December 2006, ICC-01/04-01/06-772, para. 37.

Prosecutor's decision.²⁷ According to the Chamber, the issue at hand concerned the fairness of the proceedings because it affected the balance between, on the one hand, the Prosecutor's power to decide on the opening of an investigation in strict compliance with the Statute and, on the other hand, the interests of the referring State Party to have an opportunity to challenge such a decision, as explicitly recognised by article 53(3)(a) of the Statute, and the rights of victims, as described above.²⁸ In light of the important nature of these questions and their impact over the present and future proceedings under article 53(3)(a) of the Statute, I deeply regret that these questions could not be posed before the Appeals Chamber.

C. The issues significantly affect the expeditious conduct of the proceedings

20. Article 82(1)(d) of the Statute requires not only that an appealable issue significantly affects the fairness of the proceedings, but also their expeditiousness. As previously held by the Appeals Chamber, the expeditious conduct of the proceedings constitutes an attribute of a fair trial.²⁹

21. I disagree with the Prosecutor's submission that it is not 'material if an appeal would generally provide "clarity to the Pre-Trial Chamber so that it is in a position effectively to exercise its power and duty to direct the Prosecution on reconsideration"'.³⁰ I recall that the Chamber has previously held that a settlement of the issue at hand by the Appeals Chamber would clarify the statutory regime of article 53(3)(a) of the Statute, thereby ensuring that this situation, and similar situations, can be resolved properly according to the law.³¹ The Chamber found that '[t]he clarification of the applicable regime and, by extension, the increased predictability of the outcome of the proceedings [...] significantly affect[ed] the expeditious conduct of the proceedings'.³² For this same reason, a ruling by the Appeals Chamber over the issues at hand in these proceedings would establish a clear jurisprudence that would prevent the same issues from being brought up again before the pre-trial chambers in future

²⁷ The issue at the time was '[w]hether the Pre-Trial Chamber may find that a decision by the Prosecutor further to a request for reconsideration pursuant to article 53(3)(a) of the Statute cannot be considered to be final within the meaning of rule 108(3) of the Rules of Procedure and Evidence in circumstances in which the Prosecutor has not, in the view of the Pre-Trial Chamber, carried out her reconsideration in accordance with the aforementioned request'; [2019 Decision Granting Leave to Appeal](#), ICC-01/13-73, para. 39.

²⁸ [2019 Decision Granting Leave to Appeal](#), ICC-01/13-73, para. 41.

²⁹ [Appeals Chamber Article 82\(1\)\(d\) Judgment](#), ICC-01/04-168, para. 11.

³⁰ [Prosecutor's Response](#), ICC-01/13-114, para. 23.

³¹ [2019 Decision Granting Leave to Appeal](#), ICC-01/13-73, para. 48.

³² [2019 Decision Granting Leave to Appeal](#), ICC-01/13-73, para. 48.

proceedings. In light of the aforementioned, I note that the issues raised by the Comoros significantly affect not only the fair, but also the expeditious conduct of the proceedings.

22. Once it has been found that an issue significantly affects the fair and expeditious conduct of the proceedings, there is no need to examine whether it could also significantly affect the outcome of the trial.

D. An immediate resolution by the Appeals Chamber may materially advance the proceedings

23. Additionally, I note that the last criterion set out in article 82(1)(d) of the Statute, which provides that an immediate resolution of the issue by the Appeals Chamber would ‘materially advance the proceedings’, has been interpreted as ensuring ‘legal certainty’ to the proceedings.³³ ‘Legal certainty’, as one of the requirements of a fair trial,³⁴ means ensuring that the ‘proceedings follow the right course’ and providing ‘a safety net for the integrity of the proceedings’.³⁵ I also note that the very object and purpose of article 82(1)(d) of the Statute is to safeguard the integrity of the proceedings by clearing mistakes that might taint either the fairness of the proceedings or the outcome of the trial.³⁶

24. The principle of legal certainty is inextricably linked to the concept of predictability, the principle of legitimate expectation and the rule of law.³⁷ This principle implies that legal

³³ Pre-Trial Chamber I, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, [Decision on the Defence Request for Leave to Appeal the Order Setting a Deadline for the Filing of the Applications](#), 10 May 2019, ICC-01/12-01/18-342-Red-tENG, para. 27.

³⁴ [2019 Decision Granting Leave to Appeal](#), ICC-01/13-73, para. 48. *See also* ECCC which recognises that, pursuant to rule 21 of the Internal Rules, legal certainty and the transparency of proceedings are requirements of a fair trial: ‘[t]he Pre-Trial Chamber has previously held that the fundamental principles expressed in Internal Rule 21 [...] reflect the fair trial requirements that the ECCC is bound to apply’, Case 004/07-09-2009-ECCC/OCIJ (PTC25), Decision on Appeal Against Order on [REDACTED]’s Responses D193/47, D193/49, D193/51, D193/53, D193/56 and D193/60, 31 March 2016, para. 21; ECtHR, *Nejdet Şahin and Perihan Şahin v. Turkey*, Application no. 1327/05, Judgment, 20 October 2011, para. 57.

³⁵ [Appeals Chamber Article 82\(1\)\(d\) Judgment](#), ICC-01/04-168, paras 15-16 (‘A crucial word in the second leg of article 82(1)(d) is “advance”; a term having a number of nuances depending on the context in which it is used. Here, the context is judicial proceedings. The word cannot be associated with the expeditiousness of the proceedings, one of the prerequisites for defining an appealable issue. The meaning conveyed by “advance” in the latter part of sub-paragraph (d) is “move forward”; by ensuring that the proceedings follow the right course. Removing doubts about the correctness of a decision or mapping a course of action along the right lines provides a safety net for the integrity of the proceedings. A wrong decision on an issue in the context of article 82(1)(d) of the Statute unless soon remedied on appeal will be a setback to the proceedings in that it will leave a decision fraught with error to cloud or unravel the judicial process. In those circumstances the proceedings will not be advanced but on the contrary they will be set back’).

³⁶ [Appeals Chamber Article 82\(1\)\(d\) Judgment](#), ICC-01/04-168, para. 11.

³⁷ Juha Raitio, *The Principle of Legal Certainty in EC Law* (2003), p. 127 (‘Raitio’).

rules must be sufficiently clear and precise, and that situations and legal relationships remain foreseeable.³⁸

25. I recall that the Chamber has held that ‘for the principle of legal certainty to be respected, the outcome of the proceedings needs to be predictable to the parties to a degree that is reasonable in the circumstances of the case’.³⁹ It further stated that a settlement of the issue concerned by the Appeals Chamber would clarify the statutory regime of article 53(3)(a) of the Statute, thereby ensuring that this situation, and similar situations, can be resolved properly according to the law.⁴⁰ Additionally, as mentioned above, the Chamber found that clarifying the applicable regime, thereby preserving the legal certainty over the proceeding, would significantly affect the expeditious conduct of the proceedings.⁴¹

26. With regard to the First Issue, I note that it is essential for the Prosecutor and States Parties to know whether the Chamber has the discretion not to request reconsideration, even when it finds that the Prosecutor’s decision is fraught with errors, as this goes to the heart of the statutory regime of article 53(3)(a) of the Statute.

27. With regard to the Second Issue, I note that it is of paramount importance to know if the Chamber has the power to direct the Prosecutor to reconsider her decision in respect of all identified errors and abuses, and to obtain guidance by the Appeals Chamber in this regard.⁴² The refusal to allow such questions to be brought before the Appeals Chamber deprived the parties in this and future situations of such ‘legal certainty’.

28. The foregoing considerations lead me to the conclusion that both issues raised by the Comoros significantly affect the fair and expeditious conduct of the proceedings, and that their immediate resolution by the Appeals Chamber would materially advance the proceedings.

II. Conclusion

29. Finally, I note that while recognizing that article 53(3)(a) of the Statute provides for discretion to the pre-trial chambers to request reconsideration of a decision of the Prosecutor not to investigate, I believe that the powers of the pre-trial chamber are subject to

³⁸ Raitio, p. 126.

³⁹ [2019 Decision Granting Leave to Appeal](#), ICC-01/13-73, para. 48.

⁴⁰ [2019 Decision Granting Leave to Appeal](#), ICC-01/13-73, para. 48.

⁴¹ [2019 Decision Granting Leave to Appeal](#), ICC-01/13-73, para. 48.

⁴² [Request](#), ICC-01/13-112, para. 22.

internationally recognised human rights as provided for in article 21(3) of the Statute and particularly the fundamental right of victims to know the truth, to have access to justice and to request reparations, all of which depend on the Prosecutor's decision to open an investigation, and therefore on the judicial review of such a decision. Furthermore, once the pre-trial chamber opts to review said decision, it is bound to ensure that the Prosecutor has fully taken into consideration any direction given to her, a crucial point on which further direction by the Appeals Chamber is needed.

30. In my view, the reasons which led the Chamber to grant leave to appeal to the Prosecutor in 2019 also warranted the authorisation from the Chamber for the Comoros to bring the issues raised in its Request before the Appeals Chamber for a final resolution. The discriminatory treatment by the Majority of the similar Request for leave to appeal now presented by the Comoros is both damaging for the proceedings and the credibility of the Chamber, but also totally incomprehensible.

31. For this reason, I believe that the Majority erred in rejecting the Request for leave to appeal presented by the Comoros.

32. In light of the foregoing, I would have authorised the Comoros to appeal the Impugned Decision.

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



**Judge Reine Adélaïde Sophie
Alapini-Gansou**

Dated this Monday, 21 December 2020

At The Hague, The Netherlands