

ICC MOOT COURT COMPETITION IN THE ENGLISH LANGUAGE

THE OFFICE OF THE PROSECUTOR

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**THE APPEALS CHAMBER**

**Case before the International Criminal Court (ICC):**

**Prosecutor v Dragone Goodrider of Wessos**

**The Office of the Prosecutor's Submission in the  
Appeal from the Pre-Trial Chamber's Decision on Confirmation of Charges  
against Defendant Dragone Goodrider of Wessos**

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## LIST OF ABBREVIATIONS

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<b>Abbreviation</b>	<b>Full Text</b>
AC	Appeals Chamber
Bannister	Dr. Nimera Bannister
confirmation hearing	Confirmation of charges hearing
Council	Wessos National Security Council
CUP	Cambridge University Press
Goodrider	Dragone Goodrider
Eassos	The State of Eassos
ECtHR	European Court of Human Rights
ed/eds	Editor/Editors
Edn	Edition
<i>et al.</i>	<i>Et alia</i> ('and others')
EU	European Union
IACtHR	Inter-American Court of Human Rights
<i>ibid</i>	<i>Ibidem</i> ('in the same place')
i.e.	<i>id est</i> ('in other words')
ICC	International Criminal Court

ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IHR	International Health Regulations
ILC	International Law Commission
n	Note
No.	Number
OUP	Oxford University Press
Para/paras	Paragraph/paragraphs
PTC	Pre-Trial Chamber
Rayder	Dr. Lance Rayder
Rep	Reports
Res	Resolution
Rome Statute	Rome Statute of the International Criminal Court
RPE	Rules of Procedure and Evidence
SCSL	Special Court for Sierra Leone
State Parties	State Parties to the Rome Statute of the International Criminal Court

TC	Trial Chamber
UK	United Kingdom
UN	United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
US	The United States of America
v	Versus
VCLT	Vienna Convention on the Law of Treaties
Vol	Volume
Wessos	The State of Wessos
WHO	World Health Organization

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## STATEMENT OF FACTS

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- I. **States involved:** Wessos and Eassos are neighbouring States separated by the Bloody Mountain range. Eassos is a democracy while Wessos is an authoritarian regime. Wessos is a secretive country with little involvement in the international scene. The two States share a strained relationship. Smuggling, refugee migration as well as sporadic armed incursions occur frequently at their borders. Only Eassos is party to the Rome Statute. Wessos has neither signed nor ratified the Rome Statute.
- II. **The Defendant:** Goodrider is a Wessos national. As Wessos' Minister of Defence, he possesses authority within the government over matters relating to national security and the military. To effectively carry out his duties, he is accorded substantial autonomy in his sphere of authority. Additionally, he is a trained lawyer.
- III. **The vaccine development program:** To pre-empt the possibility of the H5N8 virus infecting humans, Goodrider instructed the development of a vaccine. The development involved the creation of a mutated H5N8 virus. However, despite being informed of the potential infectiousness of the mutated virus and the high risk that it could escape the lab, Goodrider denied funding required to upgrade the existing lab facility. As Dr. Rayder, the Director of the Wessos Institute for Viral Diseases, predicted in late February, there was a safety breach in the laboratory and two scientists were infected. The scientists travelled home near the Eassos border on a crowded bus. They passed away three days later.
- IV. **Goodrider's response to the viral outbreak:** Upon receiving news of the scientists' death, Goodrider convened a meeting on 2 March 2020 to decide on measures to be taken. Having identified the symptoms of the mutated virus, he instructed the Council to quietly round-up infected individuals, set up secret quarantine centres, and suspend the once-per-week international flight. Despite having knowledge regarding the deadly virus, Goodrider instructed his subordinates not to inform anyone, including the WHO and Eassos, of the outbreak. The virus spread into Eassos, and within two months, led to 250,000 deaths in Eassos, and many more suffering from severe illness.
- V. **Proceedings before PTC VI on 1 August 2020:** Goodrider voluntarily appeared before PTC VI on 1 August. Upon the rejection of his request for interim release pending trial, he used the most offensive curse words and foul language imaginable to describe the PTC VI's ruling and Judges. He also threatened to abuse his right to self-representation to turn every stage of



the proceedings into a circus as seen in the Saddam Hussein's trial. In response, PTC VI appointed standby counsel to provide assistance and step in if necessary.

**VI. Proceedings before the PTC VI on 1 September 2020:** Goodrider was permitted to address the Court after he was given a warning that disruptive behaviour would not be tolerated. Ignoring the warning, Goodrider again resorted to racial slurs and anatomical slang when referring to the Prosecutor and Judges. Consequently, PTC VI removed him from the courtroom and instructed the appointed Defence Counsel to take-over. Goodrider participated in the remainder of the proceedings via video link and remained able to communicate with his Defence Counsel at all material times.

**VII. Procedural history:** On 15 July 2020, PTC VI granted the Prosecution's request for the issuance of a summons to appear against Goodrider. On 15 September 2020, PTC VI found that it was in the interests of justice to appoint standby counsel over Goodrider's objections under Article 67(1)(d), and to require him to participate remotely under Article 63(2) and Rule 170. Further, PTC VI also determined that there were substantial grounds to believe Goodrider ordered the commission of "other inhumane acts" as a crime against humanity under Articles 25(3)(b) and 7(1)(k). Additionally, PTC VI held it could exercise "effects jurisdiction" over Goodrider under Article 12 because the consequences of Goodrider's actions were felt in Eassos, a State Party to the Rome Statute. The Defence appeals against PTC VI's decision and requests the dismissal of all charges.

## ISSUES

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- I.** Whether Goodrider was unlawfully deprived of his right to be present at the confirmation hearing under Article 61 and to represent himself under Article 67(1)(d).
- II.** Whether the charged offenses can be prosecuted as “other inhumane acts” under Article 7(1)(k) and whether the Prosecution met its duty to establish with sufficient evidence that there were substantial grounds to believe that Goodrider ordered the commission of such a crime under Article 25(3)(b).
- III.** Whether this Court has jurisdiction to prosecute Goodrider under Article 12, considering that all of his actions related to the charges of other inhumane acts occurred in his State of nationality, Wessos, which is not a party to the Rome Statute.

## SUMMARY OF ARGUMENTS

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### **I. THIS COURT SHOULD UPHOLD PTC VI'S DECISIONS TO REMOVE GOODRIDER AND TO APPOINT STANDBY COUNSEL**

- (A) Goodrider was not deprived of his right to be present under Article 61 of the Rome Statute as effective virtual participation amounts to “presence” at the confirmation hearings stage. This is because the Rome Statute recognises such participation as a viable modality for a defendant’s participation.
- (B) In any event, any deprivation was lawful as PTC VI was empowered to remove Goodrider from the courtroom for his substantially disruptive behaviour of denigrating the Prosecutor and Judges. Before Goodrider’s removal, PTC VI had relied on other reasonable alternatives such as a firm warning and the appointment of standby counsel.
- (C) Further, Goodrider was not unlawfully deprived of his right to self-representation under Article 67(1)(d) as PTC VI’s decision to appoint standby counsel was in the interests of justice. This is because Goodrider exhibited the tendency for substantially disruptive behaviour on 1 August 2020 and the standby counsel’s mandate was sufficiently circumscribed for Goodrider to retain a primary role in his own defence.

### **II. THIS COURT SHOULD UPHOLD PTC VI'S DECISION TO PROSECUTE GOODRIDER FOR THE COMMISSION OF AN “OTHER INHUMANE ACT” WHICH CONSTITUTES A CRIME AGAINST HUMANITY UNDER ARTICLE 7(1)(K)**

- (A) Goodrider ordered the concealment of a deadly virus. This amounts to a crime against humanity under Article 7(1)(k).
- (B) The concealment is incapable of being charged as another crimes against humanity under Article 7(1). The criminalisation of concealment protects a materially distinct interest, i.e., the right to health, from the crimes of murder and extermination.
- (C) Further, Goodrider’s concealment also inflicted great suffering and serious injury to the physical health of Eassos residents as it led to deaths of 250,000 Eassos residents and infliction of severe illness on many.
- (D) Additionally, the concealment was also of a similar character to other crimes against humanity under Article 7(1). This is because the concealment deprived Eassos of information critical for saving the lives of Eassos residents and was a serious violation to the right to health.

(E) Moreover, Goodrider intended to inflict serious injury by means of his inhumane act. Goodrider was aware of the virus' infectiousness as he was warned that without informing Eassos, its population could be decimated in weeks.

**III. THIS COURT SHOULD UPHOLD PTC VI'S DECISION THAT THIS COURT CAN EXERCISE JURISDICTION UNDER ARTICLE 12**

(A) This Court has jurisdiction to prosecute Goodrider because his crime produced effects within Eassos's territory. This Court is empowered to exercise the effects jurisdiction as the term "conduct" under Article 12(2)(a) should be interpreted to include effects. The effects on Eassos were substantial, direct and foreseeable.

(B) Further, the established jurisdictional principles in *Bangladesh/Myanmar* apply as one legal element or part of the *actus reus* of the crime occurred on the territory of Eassos, a State Party to the Rome Statute. Additionally, Goodrider is not entitled any immunity.

**I. THIS COURT SHOULD UPHOLD PTC VI'S DECISIONS TO REMOVE GOODRIDER FROM THE COURTROOM AND TO APPOINT STANDBY COUNSEL**

1. Following Goodrider's "persistent and disruptive outbursts and use of foul language" in the proceedings on 1 August 2020, PTC VI appointed standby counsel to provide assistance and step in if necessary.<sup>1</sup> On 1 September 2020, the PTC removed Goodrider at the confirmation hearing after he levelled curses at the Prosecutor and Judges.<sup>2</sup> Goodrider's standby counsel was then instructed to take-over upon his removal, with Goodrider participating remotely via video-link for the remainder of the confirmation hearing.<sup>3</sup>
2. PTC VI held that it was in the interests of justice to appoint standby counsel over the objection of Goodrider under Article 67(1)(d) of the Rome Statute and to require him to participate remotely under Article 63(2).<sup>4</sup> This decision should be upheld because Goodrider was neither (A) unlawfully deprived of his right to be present under Article 61, nor (B) unlawfully deprived of his right to self-representation under Article 67(1)(d).
  - A. *Goodrider was not unlawfully deprived of his right to be present under Article 61*
3. Article 61 grants a defendant the right to be present at his confirmation hearing.<sup>5</sup> However, this right does not guarantee his physical presence in all circumstances.<sup>6</sup> PTC VI's removal of Goodrider did not unlawfully deprive him of his right to be present under Article 61 because: (1) there was no deprivation of Goodrider's right to be present as "presence" at confirmation hearings includes effective virtual participation, and (2) even assuming there was a deprivation of Goodrider's right to be present, this was not unlawful as PTC VI was empowered to remove him for his substantially disruptive behaviour.

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<sup>1</sup> *Prosecutor v Dragone Goodrider of Wessos* (Confirmation of Charges against Defendant Dragone Goodrider of Wessos) (15 September 2020) ("**Decision**"), [17].

<sup>2</sup> Decision, [19].

<sup>3</sup> *Id.*, [19].

<sup>4</sup> *Id.*, [20].

<sup>5</sup> Rome Statute 2178 UNTS 9018 ("**RS**").

<sup>6</sup> *Prosecutor v Gotovina et al.*, Trial Chamber (Order Scheduling a Status Conference) IT-06-90-PT (25 June 2007).

- (1) *Goodrider’s right to be present was not deprived as “presence” at confirmation hearings includes effective virtual participation*
4. Under Article 61(1), confirmation hearings shall be held in the “presence” of the defendant. This ensures that the defendant can effectively participate in the proceedings.<sup>7</sup> Although “presence” refers to physical presence at trial,<sup>8</sup> “presence” within the context of confirmation hearings is not strictly physical and includes effective virtual participation for three reasons.
5. *First*, the Rome Statute and RPE recognise video-link as a viable modality of participation in proceedings. For instance, a PTC possesses the discretion to allow oral witness testimony by means of audio or video technology.<sup>9</sup> Further, a defendant may apply to be present at trial using video technology,<sup>10</sup> observe the confirmation hearing from outside the courtroom through communications technology,<sup>11</sup> and even cross-examine witnesses over video-link, a procedure traditionally conducted in-person.<sup>12</sup>
6. *Secondly*, the jurisprudence across international criminal and human rights tribunals collectively affirms that the right to be present does not strictly require physical presence. The ECtHR held that, at minimum, the defendant must be able to effectively participate in proceedings and communicate with his counsel.<sup>13</sup> Similarly, the ICTY held that virtual participation is appropriate if there are no alternative means to guarantee the defendant’s

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<sup>7</sup> *Prosecutor v William Samoei Ruto and Joshua Arap Sang* (Decision on Mr Ruto’s Request for Excusal from Continuous Presence at Trial) ICC-01/09-01/11 (18 June 2013) (“**Ruto Trial Chamber V(a)**”), [37].

<sup>8</sup> *Protais Zigiranyirazo v Prosecutor* (Decision on Interlocutory Appeal) ICTR-2001-73-AR73 (30 October 2006) (“**Zigiranyirazo Decision**”), [10].

<sup>9</sup> Rules of Procedure and Evidence (“**RPE**”), Rule 67.

<sup>10</sup> RPE, Rule 134 *bis*; *Prosecutor v Abdallah Banda Abakaer Nourain* (Public redacted version of the “Prosecution’s submissions on trials *in absentia* in light of the specific circumstances of the *Banda* case”) ICC-02/05-03/09-673 (11 May 2020), [39].

<sup>11</sup> RPE, Rule 124(3).

<sup>12</sup> *Prosecutor v Zejnil Delalic* (Decision on the Motion to Allow Witnesses K, L and M to Give Their Testimony by Means of Video-Link Conference) IT-96-21-T (28 May 1997), [15].

<sup>13</sup> *Lawrence Pullicino v Malta* App No. 45441/99 (ECtHR, 15 June 2000); *Moiseyev v Russia* App No. 62936/00 (ECtHR, 9 October 2008), [214].

effective participation.<sup>14</sup> This illustrates that effective virtual participation is compatible with the right to be present so long as video-link modalities allow for effective participation.<sup>15</sup> Further, the recent shift towards using video-link in both international and domestic tribunals illustrates the feasibility of such means.<sup>16</sup> In particular, this Court’s COVID-19 guidelines demonstrate the feasibility of remote hearings without compromising procedural fairness.<sup>17</sup>

7. *Thirdly*, the relatively simplified nature of confirmation hearings permits defendants to effectively participate via virtual means. Limited evidentiary debate occurs at the confirmation hearing,<sup>18</sup> with defendants limited to the objection to charges or presentation of evidence<sup>19</sup> which are generally summary in nature.<sup>20</sup> Further, as a PTC may even confirm charges based on written submissions alone,<sup>21</sup> a hearing is not strictly mandatory. There is therefore little reason to require physical presence at the confirmation stage.
8. Given that “presence” at confirmation hearings includes effective virtual participation, Goodrider was present as he participated via video-link and retained the full ability to communicate with his standby counsel.<sup>22</sup>
9. Accordingly, Goodrider’s right to be present was not deprived.

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<sup>14</sup> *Prosecutor v Jovica Stanišić and Frank Simatović* (Decision on the Course of Proceedings) IT-03-69-AR73.2 (16 May 2008), [19].

<sup>15</sup> *Prosecutor v Laurent Gbagbo and Charles Blé Goudé* (Prosecution’s response to “Blé Goudé Defense Urgent Request for Postponement pursuant to Article 67 of the Statute”) ICC-02/11-01/15 (8 May 2020) (“**Gbagbo, Prosecution’s Response**”), [22].

<sup>16</sup> *Id.*, [14].

<sup>17</sup> International Criminal Court, *Guidelines for the Judiciary Concerning the Holding of Court Hearings During the COVID-19 Pandemic*, accessed at <<https://www.icc-cpi.int/itemsDocuments/200623-guidelines-for-court-proceedings-covid-19-eng.pdf>> (accessed 8 March 2021).

<sup>18</sup> *Prosecutor v William Samoei Ruto and Joshua Arap Sang* (Decision Requesting the Parties to Submit Information for the Preparation of the Confirmation of Charges Hearing) ICC-01/09-01/11 (29 June 2011), [8]–[9].

<sup>19</sup> RS, Article 61(6).

<sup>20</sup> *Id.*, Article 61(5).

<sup>21</sup> RPE, Rule 165.

<sup>22</sup> Decision, [19].

- (2) *In any event, any deprivation was lawful as PTC VI was empowered to remove Goodrider for his substantially disruptive behaviour*
10. Assuming there was a deprivation of Goodrider’s right to be present, the deprivation was lawful because: (a) a PTC is empowered to remove defendants who substantially disrupt proceedings; and (b) PTC VI validly exercised its discretion to remove Goodrider.
- (a) A PTC is empowered to remove defendants who are substantially disruptive
11. A defendant’s right to be present at his confirmation hearing is not absolute,<sup>23</sup> and is subject to a PTC’s power to lawfully deprive him of this right in the face of his substantially disruptive behaviour. This is for three reasons.
12. *First*, Article 61(2) allows a PTC to conduct the confirmation hearing in the absence of the accused if he had waived his right. The term “waived” can be interpreted to encompass both express and implicit waiver.<sup>24</sup> This Court in *Ruto* has held that a defendant’s substantially disruptive behaviour amounts to an implicit waiver of the right to be present.<sup>25</sup>
13. *Secondly*, a PTC has the inherent power to sanction misconduct which compromises the expeditiousness of proceedings.<sup>26</sup> This is because any court necessarily has the authority to undertake all acts reasonably required to perform its functions and to preserve the integrity of its proceedings.<sup>27</sup> Further, unlike trial where the accused’s criminal liability is assessed, it is not confirmed that a defendant at the confirmation hearing “has a case to answer”.<sup>28</sup> Therefore, if

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<sup>23</sup> *Zigiranyirazo* Decision (n 8), [14].

<sup>24</sup> *Prosecutor v William Samoei Ruto and Joshua Arap Sang* (Judgement on the Appeal of the Decision of Trial Chamber V(a) of 18 June 2013 entitled “Decision on Mr Ruto’s Request for Excusal from Continuous Presence at Trial”) ICC-01/09-01/111066 (25 October 2013), [51].

<sup>25</sup> *Ibid*; RS, Article 63(2).

<sup>26</sup> *Situation on the Registered Vessels of the Union of the Comoros* (Decision on the “Application for Judicial Review by the Government of the Union of the Comoros”) ICC-01/13 (15 November 2018) (“*Comoros*”), [102].

<sup>27</sup> *Ibid*.

<sup>28</sup> *Ruto* Trial Chamber V(a) (n 7), [60].



the TC is empowered to remove a disruptive accused at trial,<sup>29</sup> a PTC is *a fortiori* empowered to remove a disruptive defendant at the confirmation hearing.

14. *Thirdly*, it is accepted in international human rights jurisprudence that the right to be present is not absolute and disruptive behaviour is a general exception to this right.<sup>30</sup> To ensure the consistency in the Rome Statute's interpretation with internationally recognised human rights,<sup>31</sup> the PTC must be empowered to remove disruptive defendants.

15. Therefore, a PTC is empowered to remove disruptive defendants who have substantially disrupted proceedings.

(b) PTC VI validly exercised its discretionary power to remove Goodrider

16. As the decision to remove a disruptive defendant is discretionary, any review of a PTC's exercise of this power is subject to a margin of deference.<sup>32</sup> The high standard of review for this power bars this Court from interfering with a PTC's discretion unless it was so unfair and unreasonable as to constitute an abuse of discretion.<sup>33</sup>

17. For a PTC to exercise its power of removal, the following limitations must be adhered to: *first*, there must be substantially disruptive behaviour; *secondly*, the defendant's removal must occur in exceptional circumstances; *thirdly*, any removal must be proportionate. PTC VI adhered to all limitations when removing Goodrider.<sup>34</sup>

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<sup>29</sup> RS, Article 63(2).

<sup>30</sup> *Colozza and Rubinat v Italy* App No. 9024/80 (ECtHR, 12 February 1985), [29]; *Van Geyselghem v Belgium* App No. 26103/05 (ECtHR, 21 January 1999).

<sup>31</sup> RS, Article 21(3).

<sup>32</sup> *Prosecutor v Omar Hassan Ahmad Al-Bashir* (Judgement in the Jordan Referral re Al-Bashir Appeal) ICC-02/05-01/09 (6 May 2019), [35].

<sup>33</sup> *Prosecutor v Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen* (Judgement on the appeal of the Defense against the "Decision on the admissibility of the case under article 19(1) of the Statute" of 10 March 2009) ICC-02/04-01/05 OA 3 (16 September 2009), [79]–[80].

<sup>34</sup> *Ruto* Trial Chamber V(a) (n 7), [62].

18. *First*, Goodrider engaged in substantially disruptive behaviour. Substantial disruption refers to persistent and repetitive disruption.<sup>35</sup> In assessing the accused’s behaviour, the Court can consider previous instances of disruption at any stage of the proceedings.<sup>36</sup> Goodrider’s disruption was substantial as he persisted in using the “most offensive curse words and foul language imaginable” to describe the PTC in both his first appearance before the Chamber and his confirmation hearing.<sup>37</sup> Notably, Goodrider’s use of curse words came swiftly after PTC VI warned him that disruptive behaviour would not be tolerated.<sup>38</sup>
19. *Secondly*, Goodrider’s disruption amounted to an exceptional circumstance. An exceptional circumstance arises after other reasonable alternatives for stopping the disruption have proven inadequate.<sup>39</sup> Reasonable alternatives include the appointment of standby counsel,<sup>40</sup> or the issuance of a warning before the removal of a disruptive defendant.<sup>41</sup> A warning is sufficient where it allows a defendant to reasonably foresee the possibility of his removal.<sup>42</sup> In response to Goodrider’s disruptive episode on 1 August, PTC VI had already appointed standby counsel.<sup>43</sup> Further, PTC VI issued Goodrider a firm warning that additional disruptive conduct

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<sup>35</sup> Schabas, *International Criminal Court: A Commentary on the Rome Statute* (OUP, 1<sup>st</sup> Edn 2010) (“*A Commentary on the Rome Statute*”), p.967.

<sup>36</sup> *Prosecutor v Vojislav Šešelj* (Decision on Assignment of Counsel) IT-03-67-PT (21 August 2006), [29].

<sup>37</sup> Decision, [17].

<sup>38</sup> *Id*, [19].

<sup>39</sup> *Prosecutor v Bosco Ntaganda* (Corrigendum to the “Defense submissions on the scheduled oral hearing”, 5 May 2020, ICC-01/04-02/06-2524) ICC-01/04-02/06 (6 May 2020), [19].

<sup>40</sup> Schomburg, “Development of Human Rights Before International Criminal Tribunals, a European Perspective”, 17(2) *Croatian Annual of Criminal Law and Practice* 909, p.922.

<sup>41</sup> RPE, Rule 170; Scharf, “Chaos in the Courtroom, Controlling Disruptive Defendants and Contumacious Counsel in War Crimes Trials”, 39 *Case W Res J Int’l L* 155 (“*Chaos in the Courtroom*”), p.168.

<sup>42</sup> *Sejdovic v Italy* App No. 56581/00 (ECtHR, 1 March 2006), [87]; *Dembukov v Bulgaria* App No. 68020/01 (ECtHR, 28 February 2008), [48].

<sup>43</sup> Decision, [17].

would not be tolerated.<sup>44</sup> In blatant disregard of this warning, Goodrider again resorted to curse words, racial slur and anatomical slang.<sup>45</sup>

20. *Thirdly*, Goodrider's removal was proportionate. The proportionality principle requires that any restriction on the right to be present must be impaired no more than what is necessary to accomplish the objective of attaining a reasonably expeditious trial.<sup>46</sup> By limiting his removal to the remainder of the confirmation hearing, Goodrider's removal was no more than strictly necessary to restrain his disruptive behaviour.<sup>47</sup>

21. Accordingly, Goodrider was not unlawfully deprived of his right to be present under Article 61.

***B. Goodrider was not unlawfully deprived of his right to self-representation under Article 67(1)(d)***

22. The right to self-representation under Article 67(1)(d) confers upon defendants the right to defend himself in person or through legal counsel of his choosing.<sup>48</sup> This right applies to defendants in confirmation hearings.<sup>49</sup> However, this Court can appoint counsel where it is in the interests of justice.<sup>50</sup> While the right to self-representation ensures a defendant's effective participation in his defence, this right cannot compromise this Court's duty to ensure a fair and expeditious trial.<sup>51</sup>

23. PTC VI's decision to appoint standby counsel should be upheld as it was in the interests of justice for two reasons: (1) Goodrider exhibited the tendency for substantially disruptive

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<sup>44</sup> Decision, [19].

<sup>45</sup> *Ibid.*

<sup>46</sup> *Zigiranyirazo* Decision (n 8), [14].

<sup>47</sup> Decision, [19].

<sup>48</sup> *A Commentary on the Rome Statute* (n 35), pp.1037–1038.

<sup>49</sup> RPE, Rule 121(1).

<sup>50</sup> Regulations of the Court ICC-BD/01-05-16 (“**Regulations**”), Regulation 76; RS, Article 67(1)(d).

<sup>51</sup> *Slobodan Milošević v Prosecutor* (Reasons for Decision on Assignment of Defense Counsel) IT-02-54-T (22 September 2004), [65].

behaviour on 1 August 2020, and (2) the standby counsel’s mandate to provide assistance and step in if necessary was proportionate.

(1) *Goodrider exhibited the tendency for substantially disruptive behaviour on 1 August 2020*

24. The Court may restrict a defendant’s right to self-representation by imposing counsel where a defendant exhibits a tendency to disrupt the proper and expeditious conduct of proceedings.<sup>52</sup> In assessing whether disruption is sufficiently substantial to circumscribe this right, the Court may rely on a defendant’s expressed intentions to disrupt proceedings.<sup>53</sup> In *Šešelj*, the accused insisted upon self-representation, refusing any counsel appointed against his will,<sup>54</sup> and expressed from the outset his intention to “destroy” and use the ICTY as a stage to air his political views.<sup>55</sup> Such behaviour revealed the accused’s tendency to act disruptively. Thus, the ICTY found that it was in the interests of justice to appoint standby counsel even before the evidentiary phase of the proceedings.<sup>56</sup>
25. Similarly, upon the rejection of his interim release request on 1 August, Goodrider derided the PTC’s ruling, insisted on his self-representation and refused to cooperate with appointed counsel. Crucially, Goodrider threatened to abuse his right of self-representation to turn every stage of the proceedings into a circus “like Saddam Hussein did at his infamous trial”,<sup>57</sup> in plain reference to Hussein’s denigration of the judges of the Iraqi High Tribunal and the making of political diatribes, acts which led to the appointment of counsel.<sup>58</sup>

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<sup>52</sup> *Prosecutor v Slobodan Milošević* (Decision on Interlocutory Appeal of the Trial Chamber’s Decision on the Assignment of Defense Counsel) IT-02-54-AR73.7 (01 November 2004) (“**Milošević Appeals Decision**”), [13].

<sup>53</sup> Raveling, *Self-representation Before the International Criminal Tribunals* (Nomos Verlagsgesellschaft, 1<sup>st</sup> Edn 2014), p.269.

<sup>54</sup> *Prosecutor v Vojislav Šešelj* (Decision on Prosecution’s Motion for Order Appointing Counsel to Assist Vojislav With His Defense) IT-03-67-PT (9 May 2003) (“**Šešelj Trial Chamber II**”), [8].

<sup>55</sup> *Id.*, [4], [22].

<sup>56</sup> *Id.*, [27].

<sup>57</sup> Decision, [17].

<sup>58</sup> *Chaos in the Courtroom* (n 41), pp.164–165.

- (2) *The mandate of standby counsel to provide assistance and step in if necessary was proportionate*
26. Restrictions on the right to self-representation must be limited to the minimum extent necessary to ensure a reasonably expeditious trial.<sup>59</sup> When courts appoint standby counsel, the counsel's mandate must be limited such that the defendant retains control of his defence, and that the standby counsel's role remains ancillary.<sup>60</sup> A proportionate mandate would include the counsel's ability to step in when needed.<sup>61</sup> This is supported by the jurisprudence of the ICTY,<sup>62</sup> ICTR,<sup>63</sup> and SCSL.<sup>64</sup> It is also consistent with human rights jurisprudence that the right to self-representation permits the appointment of counsel provided the defendant remains involved in the proceedings.<sup>65</sup>
27. PTC VI only conferred a limited mandate upon the standby counsel to provide assistance and step in if necessary. While the standby counsel stepped in on 1 August, it was necessary due to the lack of communication between him and Goodrider.<sup>66</sup> Goodrider still retained primary control of his defence, with full latitude to address the PTC.<sup>67</sup>
28. Further, appointment of standby counsel is appropriate as it protects a defendant's overarching right to a fair trial by preventing ineffective defence by a defendant's insistence on self-

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<sup>59</sup> *Prosecutor v Radovan Karadžić* (Decision on Appointment of Counsel and Order on Further Trial Proceedings) IT-95-5/18-T (05 November 2009), [16], [25].

<sup>60</sup> *Milošević Appeals Decision* (n 52), [17]–[18].

<sup>61</sup> *Chaos in the Courtroom* (n 41), p.166.

<sup>62</sup> *Šešelj Trial Chamber II* (n 54), [28].

<sup>63</sup> *Prosecutor v Jean-Bosco Barayagwiza* (Decision on Defense Counsel Motion to Withdraw) ICTR-99-52-T (3937-3927) (2 November 2000) ("**Barayagwiza Trial Chamber I**"), p.3928.

<sup>64</sup> *Prosecutor v Samuel Hinga Norman* (Decision on The Application of Samuel Hinga Norman for Self-Representation under Article 17(4)(D)) SCSL-04-14-T (8 June 2004), [21].

<sup>65</sup> *Šešelj Trial Chamber II* (n 54), [18].

<sup>66</sup> Decision, [17]–[18].

<sup>67</sup> *Id.*, [19].

representation.<sup>68</sup> The ICTR in *Barayagwiza* held that the appointment of standby counsel to appear for the defence, even against the defendant's wishes, remains within the interests of justice as it not only protects the accused's interests, but also the administration of justice.<sup>69</sup> The appointment of standby counsel allowed for Goodrider's effective defence, as the very issues raised by counsel in his submissions were the very issues this Chamber deemed appropriate to consider.<sup>70</sup>

29. Accordingly, Goodrider was not unlawfully deprived of his right to self-representation under Article 67(1)(d).

30. For the above reasons, PTC VI's decisions to remove and appoint standby counsel should be upheld.

## **II. THIS COURT SHOULD UPHOLD PTC VI'S DECISION TO PROSECUTE GOODRIDER FOR THE COMMISSION OF AN "OTHER INHUMANE ACT" WHICH CONSTITUTES A CRIME AGAINST HUMANITY UNDER ARTICLE 7(1)(K)**

31. Goodrider ordered the deliberate concealment of the mutated H5N8 viral outbreak. Many Eassos citizens died and suffered severe illness<sup>71</sup> as the virus had proliferated not only to Eassos' coastal cities but also to its densely populated capital city of Hightown.<sup>72</sup> In light of this, Goodrider should be prosecuted for the commission of a crime against humanity under Article 7(1)(k) because: (A) the requisite contextual elements are satisfied; (B) the requisite objective elements are satisfied; (C) the requisite subjective elements are satisfied; and (D) Goodrider is individually criminally responsible for ordering a crime against humanity under Article 25(3)(b).

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<sup>68</sup> Schabas, *An Introduction to the International Criminal Court* (CUP, 3<sup>rd</sup> Edn 2007), p.291.

<sup>69</sup> *Barayagwiza* Trial Chamber I (n 63), p.3928.

<sup>70</sup> Decision, [18].

<sup>71</sup> Decision, [13].

<sup>72</sup> *Id*, p.9.

**A. *The requisite contextual elements are satisfied***

32. Three contextual elements are required to establish a crime against humanity:<sup>73</sup> (1) an attack directed against a civilian population (2) that is “widespread” or “systematic”, and (3) pursuant to a State or organisational policy. All three requirements are satisfied here.

*(1) The concealment of a deadly virus was an attack directed against a civilian population*

33. An attack can be a campaign, operation, or a course of conduct, involving multiple commission of acts not isolated and spontaneous in nature.<sup>74</sup> The attack can involve mistreatment of the civilian population<sup>75</sup> and need not be violent.<sup>76</sup> The civilian population must also be the primary target of the attack, not an incidental victim.<sup>77</sup>

34. Here, a state-wide operation was undertaken to dispose the dead, round up symptomatic citizens, and suspend international flights.<sup>78</sup> Goodrider specifically ordered the Council not to inform Eassos of the virus despite Bannister’s explicit warning that the Eassos population could be “decimated in a matter of weeks”.<sup>79</sup> This operation prevented critical information from reaching its primary target, Eassos, depriving it of the opportunity to mount a timely response to the virus. This served a “death sentence” on the 250,000 lives and inflicted severe illness on many more.<sup>80</sup>

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<sup>73</sup> RS, Articles 7(1), 7(2)(a); *Prosecutor v Kunarac et al.* (Appeal Judgement) IT-96-23 & IT-96-23/1-A (12 June 2002), [85].

<sup>74</sup> *Prosecutor v Katanga and Chui* (Decision on the Confirmation of Charges) ICC-01/04-01/07 (30 September 2008) (“**Katanga Pre-Trial Chamber I**”), [396].

<sup>75</sup> *Prosecutor v Milomir Stakić* (Judgement) IT-97-24-T (31 July 2003) (“**Stakić Trial Chamber II**”), [623].

<sup>76</sup> *Prosecutor v Jean-Paul Akayesu* (Judgement) ICTR-96-4-A (1 June 2001), [581].

<sup>77</sup> *Prosecutor v Ongwen* (Trial Judgement) ICC-02/04-01/15 (4 February 2021) (“**Ongwen Trial Judgement**”), [2675].

<sup>78</sup> Decision, p.14.

<sup>79</sup> *Ibid.*

<sup>80</sup> Decision, p.10.

(2) *The attack was both widespread and systematic*

35. An attack is widespread if it is massive, frequent, carried out collectively with considerable seriousness, and directed against multiple victims.<sup>81</sup> The focus is on the scale of victimisation.<sup>82</sup> The attack is systematic if it is organised and non-accidental in its occurrence.<sup>83</sup>

36. The attack involving the state-wide operation of concealing the deadly virus was widespread and systematic. In *Katanga*, an attack resulting in 3,000 casualties was deemed sufficiently widespread.<sup>84</sup> Being several orders of magnitude higher, 250,000 deaths and infliction of severe illness would evidently constitute a widespread attack. Further, the attack was systematic as the Council deliberately planned and implemented measures to conceal the deadly virus.<sup>85</sup>

(3) *The attack occurred pursuant to or in furtherance of a State policy*

37. The attack must be committed pursuant to or in furtherance of a State or organisational policy. A policy may consist of a pre-established design or plan.<sup>86</sup> This policy need not be formal,<sup>87</sup> and does not require a high degree of organisation.<sup>88</sup> The State policy was to take all necessary measures to conceal the viral outbreak. Goodrider's order formed the policy's objective which his subordinates subsequently worked towards through their conduct.

38. Accordingly, the requisite contextual elements are satisfied, as there was a widespread and systematic attack directed against a civilian population pursuant to a State policy.

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<sup>81</sup> *Katanga* Pre-Trial Chamber I (n 74), [395].

<sup>82</sup> *Prosecutor v Blaškić* (Judgement) IT-95-14-T (3 March 2000) ("**Blaškić Trial Judgement**"), [206].

<sup>83</sup> *Ongwen* Trial Judgement (n 77), [2682].

<sup>84</sup> *Katanga* Pre-Trial Chamber I (n 74), [408]–[411].

<sup>85</sup> Decision, p.14.

<sup>86</sup> *Ongwen* Trial Judgement (n 77), [2679].

<sup>87</sup> *Prosecutor v Musema* (Judgement) ICTR-96-13-T (27 January 2000), [204].

<sup>88</sup> Byron, *War Crimes and Crimes Against Humanity in the Rome Statute of the International Criminal Court* (Manchester University Press, 1<sup>st</sup> Edn 2009), p.205.



**B. The requisite objective elements are satisfied**

39. By concealing a deadly virus, Goodrider deprived Eassos of the opportunity to timeously respond to the outbreak, endangering the lives of Eassos residents. The requisite objective elements are satisfied for this act to be recognised as an “other inhumane act” under Article 7(1)(k) as the concealment of a deadly virus: (1) is not subsumed under the crimes against humanity of murder and/or extermination, (2) inflicted serious injury to body or physical health, and (3) is of a similar character to other crimes against humanity under Article 7(1).

(1) *The concealment of a deadly virus is not subsumed under the crimes against humanity of murder and/or extermination*

40. For an act to be characterised as an “other inhumane act” under Article 7(1)(k), it must be incapable of being subsumed as another crime against humanity under Article 7(1).<sup>89</sup> This requires at least one materially distinct element from the other acts referred to in Article 7(1), with such an element including protected interests.<sup>90</sup> Criminalisation is permitted where “the *full* scope of the culpable conduct is not reflected by its qualification under the enumerated crime(s) alone”.<sup>91</sup>

41. The concealment of a deadly virus differs from crimes of murder and/or extermination as it focuses on the protected interest of the victims’ health. Article 7(1)(k) expressly protects victims against “injury to body or to mental or physical *health*”.<sup>92</sup> Criminalising the concealment of a deadly virus under Article 7(1)(k) protects the health of Eassos residents, as reflected by the infliction of severe illnesses such as severe fever, persistent coughing, and extreme breathing difficulties.<sup>93</sup> This is an interest not fully captured by the crimes of murder and/or extermination which protect against harm to life.<sup>94</sup> Therefore, the recognition of the acts

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<sup>89</sup> *Prosecutor v Muthaura* (Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute) ICC-01/09-02/11-382-Red, (23 January 2012), [277].

<sup>90</sup> *Prosecutor v Ongwen* (Confirmation of Charges against Dominic Ongwen) ICC-02/04-01/15 (23 March 2016) (“**Ongwen Pre-Trial Chamber II**”), [92].

<sup>91</sup> *Ongwen* Trial Judgement (n 77), [2747].

<sup>92</sup> RS, Article 7(1)(k).

<sup>93</sup> Decision, p.13.

<sup>94</sup> Lee, *The International Criminal Court: The Elements of Crimes & Rules of Procedure & Evidence* (Transnational Pub Inc, 1<sup>st</sup> Edn 2001), p.82.

as a separate crime is warranted to reflect the otherwise unprotected harm to the health of victims.

(2) *The concealment of a deadly virus inflicted serious injury to the physical and mental health of Eassos residents*

42. For an act to constitute an “other inhumane act” under Article 7(1)(k), the act must have inflicted great suffering, or serious injury to body or to mental or physical health.<sup>95</sup> Long-term effects of any injury are relevant in determining the seriousness of the act.<sup>96</sup> Here, the concealment of a deadly virus inflicted serious injury on the physical and mental health of Eassos residents.

43. Serious injuries were inflicted on the physical health of Eassos residents. 250,000 Eassos residents died within two months.<sup>97</sup> Many more suffered severe illness, such as high fever and extreme breathing difficulties.<sup>98</sup> The mutated H5N8 virus’ mortality rate of 34.5% far surpasses even that of the COVID-19 virus,<sup>99</sup> which is recognised as the “greatest challenge of our age” by UN Secretary-General.<sup>100</sup> The WHO deemed the concealment of the mutated H5N8 virus to be a “death sentence” to the Eassos residents.<sup>101</sup> Further, the symptoms of H5N8 virus are likely to result in prolonged illnesses, as seen in the patients of the COVID-19 and H5N1 viruses.<sup>102</sup>

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<sup>95</sup> *Ongwen* Pre-Trial Chamber II (n 90), [92]; Elements of Crimes UN Doc PCNICC/2000/1/Add.2. (“**EOC**”), Article 7(1)(k).

<sup>96</sup> *Prosecutor v Nuon Chea and Khieu Samphan* (Case 002/01 Judgement) 002/19-09-2007/ECCC/TC (7 August 2014) (“**Chea Trial Judgement**”), [439].

<sup>97</sup> Decision, p.9.

<sup>98</sup> *Id.*, p.14.

<sup>99</sup> World Bank, *How COVID-19 is Changing the World: A Statistical Perspective*, accessed at <<https://unstats.un.org/unsd/ccsa/documents/covid19-report-ccsa.pdf>> (accessed 8 March 2021).

<sup>100</sup> United Nations Press Release, *COVID-19 Must Be Global Wake-Up Call, Secretary-General Tells World Health Assembly, Saying Virus Has ‘Brought Us to Our Knees*, accessed at <<https://www.un.org/press/en/2020/sgsm20085.doc.htm>> (accessed 8 March 2021).

<sup>101</sup> Decision, p.10.

<sup>102</sup> World Health Organization, *Long-Term Effects of COVID-19*, accessed at <[https://www.who.int/docs/default-source/coronaviruse/risk-comms-updates/update-36-long-term-symptoms.pdf?sfvrsn=5d3789a6\\_2](https://www.who.int/docs/default-source/coronaviruse/risk-comms-updates/update-36-long-term-symptoms.pdf?sfvrsn=5d3789a6_2)> (accessed 8 March 2021).

44. Further, the mental health of Eassos residents was seriously injured. In *Brima*, the SCSL held that the psychological trauma of watching family members die amounted to serious injury on the victims' mental health.<sup>103</sup> Similarly, the H5N8 virus claimed the lives of 250,000 men, women, and children,<sup>104</sup> leaving survivors to witness the deaths of their loved ones. This would have seriously injured the mental health of Eassos residents.
- (3) *The concealment of a deadly virus is of a similar character to other crimes against humanity under Article 7(1)*
45. For an act to qualify as an “inhumane act” under Article 7(1)(k), it must be of a similar character to the other crimes against humanity under Article 7(1).<sup>105</sup> This means that the act must be determined on a case-by-case basis to be of a similar seriousness to the other crimes against humanity.<sup>106</sup> Three factors are relevant in this assessment:<sup>107</sup> *first*, the nature of the acts; *secondly*, the commission of any serious violations of human rights; and *thirdly*, the impact on victims.
46. *First*, the nature of concealment is analogous to “other inhumane acts”. “Other inhumane acts” include the taking of active steps to deny victims objects critical for their survival such as food,<sup>108</sup> means of subsistence,<sup>109</sup> or humanitarian assistance.<sup>110</sup> The concealment of information regarding the deadly virus was not merely a passive omission in warning other States of the virus. Active steps were taken to silence Wessos residents from leaking any information regarding the virus. Such measures included the deployment of the military apparatus to dispose the bodies of infected scientists and their families, round up all symptomatic individuals, and

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<sup>103</sup> *Prosecutor v Brima Bazzy Kamara* (Judgement) SCSL-2004-16-A (22 February 2008), [199].

<sup>104</sup> Decision, [14].

<sup>105</sup> *Ongwen* Pre-Trial Chamber II (n 90), [92].

<sup>106</sup> *Prosecutor v Clément Kayishema* (Judgement (Reasons)) ICTR-95-1-A (4 December 2001), [150].

<sup>107</sup> *Chea* Trial Judgement (n 96), [438].

<sup>108</sup> *Prosecutor v Dragan Nikolić* (Indictment) IT-94-2-1 (4 November 1994), [24.1].

<sup>109</sup> UN International Law Commission, “The Charter and Judgement of the Nuremberg Tribunal: History and Analysis submitted by the Secretary-General”, UN Sales No.1949, V.7, p.67.

<sup>110</sup> Reeves, “Humanitarian Obstruction as a Crime Against Humanity: The Example of Sudan”, 54(3) *African Studies Review* 165, pp.167–168.

even suspend international flights.<sup>111</sup> The veil of secrecy over the deadly virus was only lifted after the efforts of Rayder and the now-missing Secretary of the Council.<sup>112</sup> The concealment deprived Eassos of information critical for saving the 250,000 lives lost, and was thus effectively handed a “death sentence” according to the WHO.<sup>113</sup>

47. *Secondly*, the concealment involves a serious violation of the right to health. Serious violations of human rights are indicators of the commission of an “inhumane act” of similar character to the other crimes against humanity.<sup>114</sup> The right to health guarantees a person’s enjoyment of the highest attainable standard of physical and mental health.<sup>115</sup> This manifests in States’ obligation to take steps for the “prevention, treatment and control” of diseases,<sup>116</sup> such as by improving epidemiological surveillance,<sup>117</sup> assisting other States in controlling epidemics,<sup>118</sup> refraining from censoring health-related information,<sup>119</sup> and notifying public health emergencies of international concern to the WHO.<sup>120</sup> Despite Bannister’s suggestion to notify the WHO and Eassos, Goodrider nonetheless ordered the censorship of any information regarding the virus.<sup>121</sup> The concealment of all information relating to the virus was a draconian measure, contravening

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<sup>111</sup> Decision, [12].

<sup>112</sup> *Id.*, [11]–[12].

<sup>113</sup> *Id.*, [13].

<sup>114</sup> *Katanga* Pre-Trial Chamber I (n 74), [448].

<sup>115</sup> International Covenant on Civil and Political Rights 999 UNTS 171, Article 12(1); European Social Charter ETS 163, Article 11; African Charter on Human and Peoples’ Rights CAB/LEG/67/3 Rev. 5, 21 ILM 58, Article 16.

<sup>116</sup> International Covenant on Economic, Social and Cultural Rights 993 UNTS 3, Article 12(2)(c).

<sup>117</sup> UN Committee on Economic, Social and Cultural Rights, “General Comment No.14” UN Doc. E/C.12/2000/4 (“**GC 14**”), [16].

<sup>118</sup> GC 14 (n 117), [45].

<sup>119</sup> *Id.*, [34].

<sup>120</sup> International Health Regulations (2005) 2509 UNTS 79, Articles 6(1), 7.

<sup>121</sup> Decision, p.14.

nearly all protections guaranteed under the right to health, including Wessos' own obligations to the WHO as a member State.<sup>122</sup>

48. *Thirdly*, as argued above,<sup>123</sup> the viral outbreak caused serious injury to the physical and mental health of the Eassos' residents. The impact on the victims includes infliction of serious physical or mental injury to the victims' health.<sup>124</sup> Such injury confers an act with a similar character to the other crimes against humanity, as such injury would *ipso facto* be a serious violation of international customary law and human rights.<sup>125</sup>
49. It cannot be argued that criminalising the concealment of a deadly virus would violate the *nullum crimen sine lege* principle as the concealment was not a recognised discrete crime at the time of its commission.<sup>126</sup> It is accepted that this principle is not violated where the elements of a crime of an "other inhumane act" have been established, as this crime functions as a residual category covering conduct falling outside other categories of crimes against humanity.<sup>127</sup>
50. Accordingly, the requisite objective elements are satisfied.

**C. *The requisite subjective elements are satisfied***

51. Three subjective elements need to be satisfied under Article 7(1)(k):<sup>128</sup> *first*, the perpetrator must intend to inflict great suffering or serious injury to body or mental or physical health by means of an inhumane act; *secondly*, the perpetrator must be aware of the factual circumstances establishing the character of the act;<sup>129</sup> and *thirdly*, the perpetrator must know or intend the

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<sup>122</sup> Decision, [3].

<sup>123</sup> See [42]–[44] above.

<sup>124</sup> *Prosecutor v Bagilishema* (Judgement) ICTR-95-1A-T (7 June 2001), [91].

<sup>125</sup> *Blaškić* Trial Judgement (n 82), [239].

<sup>126</sup> RS, Article 22.

<sup>127</sup> *Chea* Trial Judgement (n 96), [443], [437].

<sup>128</sup> RS, Article 30; EOC, Article 7(1)(k).

<sup>129</sup> *Katanga* Pre-Trial Chamber I (n 74), [455].

conduct to be part of a widespread or systematic attack directed against a civilian population.<sup>130</sup> All three subjective elements are satisfied.

52. *First*, Goodrider intended to inflict serious injury to body or to mental or physical health by means of his inhumane act. Under Article 30(2)(b), a person intends a consequence if he is aware that it will happen in the ordinary course of events.<sup>131</sup> The requisite likelihood of events occurring is of virtual certainty, a standard lower than absolute certainty.<sup>132</sup> Further, to confirm the charges, this Court only needs to be satisfied that there are substantial grounds to believe that Goodrider intended the consequences.<sup>133</sup>
53. Goodrider knew with virtual certainty that the H5N8 virus was deadly and would spread into Eassos, killing many of their citizens. When Goodrider ordered the creation of the H5N8 vaccine, Rayder, the director of the Institute for Viral Diseases, cautioned him that the project would involve viral agents categorised within Risk Group 4, the highest risk classification by the WHO.<sup>134</sup> After two scientists had contracted the virus, Rayder informed Goodrider that the scientists had potentially exposed dozens of individuals along the porous Wessos-Eassos border, the site of significant cross-border activities.<sup>135</sup> These scientists died within three days. Goodrider then convened an emergency meeting with his Council and admitted that a “particularly nasty strain of the avian flu” has escaped.<sup>136</sup> During the meeting, Bannister, the Minister of Health, warned Goodrider that the Eassos population “could be decimated in a

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<sup>130</sup> *Prosecutor v William Samoei Ruto and Joshua Arap Sang* (Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute) ICC-01/09-01/11 (23 January 2012), [292].

<sup>131</sup> RS, Article 30(2)(b).

<sup>132</sup> *Prosecutor v Thomas Lubanga Dyilo* (Judgement on the Appeal of Mr Thomas Lubanga Dyilo against his conviction, Appeals Chamber) ICC-01/04-01/06-3121-Red (1 December 2014), [447].

<sup>133</sup> RS, Article 61(5).

<sup>134</sup> Decision, p.11.

<sup>135</sup> *Id.*, [3], p.11.

<sup>136</sup> Decision, p.14.

matter of weeks”.<sup>137</sup> Therefore, Goodrider knew, with virtual certainty, that the virus would spread into Eassos, killing many Eassos residents.

54. *Secondly*, Goodrider was aware of the factual circumstances establishing the character of his acts. To establish criminal liability, the perpetrator must know that such circumstances exist.<sup>138</sup> As the Minister of Defence,<sup>139</sup> Goodrider played a central role in the viral outbreak, from ordering the creation of a vaccine without safety precautions,<sup>140</sup> to ordering the concealment of information regarding the outbreak.<sup>141</sup>
55. *Thirdly*, Goodrider knew that his conduct formed part of the widespread and systematic attack directed against the Eassos population. To establish such knowledge, the perpetrator must know of the wider context in which his acts occur and that his acts are part of the attack.<sup>142</sup> As argued above,<sup>143</sup> the attack comprised the state-wide operation to conceal information regarding the deadly virus. As the orchestrator who ordered this operation,<sup>144</sup> Goodrider cannot contest his knowledge of the wider context and the part his acts played in the attack.
56. Accordingly, the requisite subjective elements are satisfied.

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<sup>137</sup> Decision, p.14.

<sup>138</sup> RS, Article 30(3).

<sup>139</sup> Decision, [2].

<sup>140</sup> *Id.*, p.12.

<sup>141</sup> *Id.*, [12].

<sup>142</sup> *Prosecutor v Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic* (Judgement) IT-96-23-T & IT-96-23/1-T (February 22, 2001), [410].

<sup>143</sup> See [33]–[34] above.

<sup>144</sup> Decision, p.14.

**D. Goodrider is individually criminally responsible under Article 25(3)(b) for ordering a crime against humanity**

57. To be responsible under Article 25(3)(b) of the Rome Statute, four requirements must be satisfied:<sup>145</sup> *first*, the person assumed a position of authority; *secondly*, the person instructed another person to perform an act in the execution of which a crime is carried out; *thirdly*, the order had a direct effect on the commission of the crime; and *fourthly*, the person was at least aware that the crime will be committed in the ordinary course of events as a consequence of the order.<sup>146</sup>
58. *First*, Goodrider assumed a position of authority as the Minister of Defense. He wielded power over all agencies and government functions relating to national security and the Wessos armed forces and police.<sup>147</sup> *Secondly*, Goodrider instructed the Council to conceal information regarding the viral outbreak.<sup>148</sup> *Thirdly*, Goodrider's orders had a direct effect on the commission of the crime. The Ministers complied with Goodrider's orders,<sup>149</sup> keeping the viral outbreak an absolute secret in three weeks.<sup>150</sup>
59. *Fourthly*, Goodrider was aware that the crime will be committed in the ordinary course of events as a consequence of his orders. An order need not be manifestly illegal,<sup>151</sup> such that the perpetrator need only be aware of a substantial likelihood that a crime would have been committed.<sup>152</sup> As argued above, Goodrider was virtually certain that the deadly virus would spread into Eassos, resulting in deaths and serious injuries.<sup>153</sup> Considering further the

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<sup>145</sup> *Prosecutor v Sylvestre Mudacumura* (Decision on the Prosecutor's Application under Article 58) ICC-01/04-01/12 (13 July 2012) ("**Mudacumura Pre-Trial Chamber II**"), [63].

<sup>146</sup> *Stakić* Trial Chamber II (n 75), [445].

<sup>147</sup> Decision, p.2.

<sup>148</sup> *Id.*, p.14.

<sup>149</sup> *Ibid.*

<sup>150</sup> *Ibid.*

<sup>151</sup> *Blaškić* Trial Judgement (n 82), [282].

<sup>152</sup> *Stakić* Trial Chamber II (n 75), [445].

<sup>153</sup> See [52]–[53] above.



suspicious disappearance of the Council’s Secretary after leaking the 2 March 2020 meeting minutes,<sup>154</sup> and Goodrider’s active attempts to conceal the virus,<sup>155</sup> Goodrider was aware of the substantial likelihood that a crime would have been committed.

60. Accordingly, Goodrider is individually criminally responsible under Article 25(3)(b) for ordering a crime against humanity.
61. For the above reasons, this Court should uphold PTC VI’s decision to prosecute Goodrider for the commission of an “other inhumane act” which constitutes a crime against humanity under Article 7(1)(k).

### **III. THIS COURT SHOULD UPHOLD PTC VI’S DECISION THAT THIS COURT CAN EXERCISE JURISDICTION UNDER ARTICLE 12**

62. For this Court to exercise jurisdiction over Goodrider, the preconditions under Article 12 must be met.<sup>156</sup> Under Article 12(2)(a), a provision recognised as expressing the territoriality principle,<sup>157</sup> it must be shown that the perpetrator’s “conduct” occurred on the State Party’s territory.<sup>158</sup> PTC VI determined that it was empowered to exercise “effects jurisdiction” under Article 12.<sup>159</sup> Effects jurisdiction is a variant of the territoriality principle allowing the exercise of jurisdiction when substantial, direct, and foreseeable effects occur within a State Party territory, even though the criminal conduct occurred in a non-State Party.<sup>160</sup> PTC VI’s decision should be upheld because: (A) the proper interpretation of Article 12(2)(a) allows this Court to exercised jurisdiction over Goodrider due to the substantial, direct, and foreseeable effects from

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<sup>154</sup> Decision, [12].

<sup>155</sup> *Id.*, p.14.

<sup>156</sup> RS, Article 12.

<sup>157</sup> *Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar* (Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the People’s Republic of Bangladesh/Republic Union of Myanmar) ICC-01/19 (14 November 2019) (“**Bangladesh/Myanmar Pre-Trial Chamber III**”), [44].

<sup>158</sup> RS, Article 12(2)(a).

<sup>159</sup> Decision, [20].

<sup>160</sup> Felix Eboibi, “Jurisdiction of the International Criminal Court: Analysis, Loopholes and Challenges” (2012) NAUJILJ 28, p.39.

the concealment of a deadly virus; and **(B)** the established jurisdictional principles in *Bangladesh/Myanmar* apply to the present case.

**A. This Court can exercise effects jurisdiction under Article 12(2)(a), as the crime produced substantial, direct and foreseeable effects within the territory of Eassos, a State Party**

63. This Court has the power to determine the extent of its own jurisdiction, including the appropriate interpretation of the ambit of territorial jurisdiction under Article 12(2)(a).<sup>161</sup> This Court can exercise jurisdiction over Goodrider under Article 12(2)(a) because: (1) the term “conduct” under Article 12(2)(a) should be interpreted to include effects; and (2) substantial, direct and foreseeable effects occurred on the territory of Eassos, a State Party.

(1) *The term “conduct” under Article 12(2)(a) is interpreted to include substantial, direct, and foreseeable effects*

64. In interpreting a treaty provision, account must be taken of its ordinary meaning in its context and with its object and purpose.<sup>162</sup> The term “conduct” is interpreted to include substantial, direct, and foreseeable effects through these three interpretative aspects.

65. *First*, the ordinary meaning of “conduct” in Article 12(2)(a) is consistent with the exercise of effects jurisdiction. This Court has held that the term “conduct” is defined as a form of “behaviour”, a concept encompassing more than the notion of an act to include its effects.<sup>163</sup>

66. *Secondly*, a contextual interpretation of Article 12(2)(a) suggests that this Court can exercise jurisdiction where a crime’s effects occur on State Party territory. A contextual interpretation of a treaty involves considering the provision within the context of the rules of international law.<sup>164</sup> Under international law, States are free to exercise jurisdiction provided there is minimally, sufficient nexus with their territory.<sup>165</sup> The exercise of effects jurisdiction conforms to this rule of international law as it stipulates a minimum threshold that the effects within the

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<sup>161</sup> *Request Under Regulation 46(3) of the Regulations of the Court* (Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute”) ICC-RoC46(3)-01/18 (6 September 2018) (“*Bangladesh/Myanmar Pre-Trial Chamber I*”), [30].

<sup>162</sup> *Id.*, [91]; Vienna Convention on the Law of Treaties 115 UNTS 331 (“**VCLT**”).

<sup>163</sup> *Bangladesh/Myanmar Pre-Trial Chamber III* (n 157), fn.88.

<sup>164</sup> *Bangladesh/Myanmar Pre-Trial Chamber I* (n 161), [65].

<sup>165</sup> *Entscheidungen des Bundesverfassungsgerichts* 135 ILR 152, 165; *Ze’ev Rosenstein v Israel* [2005] ILDC 159, [33]; *Libman v The Queen* [1985] 2 SCR 178, 200; *Solicitor-General v Reid* [1997] 3 NZLR 617, pp.631–632.

State Party territory are substantial, direct, and foreseeable.<sup>166</sup> Further, the exercise of effects jurisdiction is consistent with the *Lotus* principle under which the exercise of jurisdiction is allowed in the absence of any prohibitive rule under international law.<sup>167</sup>

67. *Thirdly*, the object and purpose of Article 12(2)(a) supports the interpretation of “conduct” to include effects. To achieve the purpose of ending impunity for crimes of international concern,<sup>168</sup> State Parties delegate their sovereign ability to prosecute crimes to this Court.<sup>169</sup> This means that the drafters of the Rome Statute intended this Court to exercise jurisdiction in the same circumstances where States Parties would do so over their domestic crimes.<sup>170</sup> As a matter of state practice, effects jurisdiction is exercised by Argentina,<sup>171</sup> Australia,<sup>172</sup> Bahrain,<sup>173</sup> Belgium,<sup>174</sup> France,<sup>175</sup> Hong Kong,<sup>176</sup> New Zealand,<sup>177</sup> Singapore,<sup>178</sup> South

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<sup>166</sup> Schmitt, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* (CUP, 2<sup>nd</sup> Edn 2017) (“**Tallinn Manual 2.0**”).

<sup>167</sup> Scharf, “The ICC’s Jurisdiction over the Nationals of Non-Party States: A Critique of the U.S. Position”, 64 *L & Contemp Probs* 67, p.72.

<sup>168</sup> RS, Preamble; *Situation in the State of Palestine* (Decision on the “Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine”) ICC-01/18 (5 February 2021), [104].

<sup>169</sup> *Bangladesh/Myanmar Pre-Trial Chamber I*, (n 161), [60]; Schabas & Pecorella, “Article 12”, in Triffterer and Ambos (eds.), *The Rome Statute of the International Criminal Court: A Commentary* (Hart Publishing, 3<sup>rd</sup> Edn 2016), pp.681–683, fn.15.

<sup>170</sup> *Bangladesh/Myanmar Pre-Trial Chamber I* (n 161), [70].

<sup>171</sup> Argentina Penal Code 1921, Article 1(1).

<sup>172</sup> Australia Criminal Code Act 1995, s 15(1)(a); Ireland-Piper, *Accountability in Extraterritoriality* (Edward Elgar Publishing, 1<sup>st</sup> Edn 2017), p.76.

<sup>173</sup> Bahrain Penal Code 1976 (as amended by Legislative Decree No. 9 of 1982), Article 6.

<sup>174</sup> *Atkinson v Ministère Public Luxembourg* [1995] 100 *Int’l Law Rev* 610.

<sup>175</sup> Greenberg, “Return to Lilliput: The LICRA v. Yahoo! Case and the Regulation of Online Content in the World Market”, 18 *Berkeley Tech LJ* 1191, p.1193.

<sup>176</sup> *HKSAR v Man Kwok Man* [2000] 1 *HKC* 778.

<sup>177</sup> New Zealand Crimes Act 1961, s 7.

<sup>178</sup> *PP v Taw Cheng Kong* [1998] 2 *SLR* 410 (“**Taw Cheng Kong**”), [88].

Africa,<sup>179</sup> Zimbabwe,<sup>180</sup> the EU,<sup>181</sup> India,<sup>182</sup> and even the US.<sup>183</sup> This state practice is acknowledged by the ICJ,<sup>184</sup> and various academic scholars.<sup>185</sup> This Court has accepted that States exercising effects jurisdiction possess the requisite *opinio juris* in conformity with international law.<sup>186</sup>

68. Further, the Rome Statute must be interpreted in light of subsequent developments.<sup>187</sup> In recent years, crimes increasingly span across international borders such as international terrorism,<sup>188</sup> cybercrimes,<sup>189</sup> anti-trust violations,<sup>190</sup> theft,<sup>191</sup> deportation,<sup>192</sup> and here, a cross-border viral outbreak. In response, States have assumed effects jurisdiction over crimes not only for

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<sup>179</sup> *American Soda Ash Corp & CHC Global (Pty) Ltd. v Competition Commission of South African et al.* [2002] Case 12/CAC/DEC01.

<sup>180</sup> *S. v Mharapara* [1985] 84 ILR 1 (“*Mharapara*”).

<sup>181</sup> *Gencor Ltd v Commission of the European Communities* [1999] E.C.R. II-753, [90].

<sup>182</sup> *GVK Industries Ltd v The Income Tax Officer* [2011] 3 SCR 366–367.

<sup>183</sup> US Sherman Antitrust Act 1896, [1]; *US v Nippon Paper Industries Co. Ltd.* [1997] 109 F.3d (“*Nippon Paper*”), p.1, 8.

<sup>184</sup> *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium), Judgement*, (2002) ICJ Rep 3 (“*Arrest Warrant*”), [47].

<sup>185</sup> Schabas, *Introduction to the International Criminal Court* (CUP, 5<sup>th</sup> Edn 2017), p.67; Gallant, *The Principle of Legality in International and Comparative Criminal Law* (CUP, 1<sup>st</sup> Edn 2009), p.342.

<sup>186</sup> *Bangladesh/Myanmar Pre-Trial Chamber III* (n 157), [56]–[57].

<sup>187</sup> VCLT, Articles 31(3)(a), 31(3)(b); *Prosecutor v Furundžija* (Judgement) IT-95-17/1-T (10 December 1998), [165].

<sup>188</sup> Kolb, “The Exercise of Criminal Jurisdiction over International Terrorists”, in Andrea Bianchi, *Enforcing International Law Norms Against Terrorism* (Hart Publishing, 1<sup>st</sup> Edn 2004), pp.244–245.

<sup>189</sup> Fyfe, “Tracking Hate Speech Acts as Incitement to Genocide in International Criminal Law”, 30(2) *Leiden Journal of International Law* 523; *Tallinn Manual 2.0* (n 166).

<sup>190</sup> *Nippon Paper* (n 183).

<sup>191</sup> *Mharapara* (n 180).

<sup>192</sup> *Bangladesh/Myanmar Pre-Trial Chamber I* (n 161).

violations of anti-trust regulations, but with regard to human rights violations<sup>193</sup> and ordinary criminal law violations.<sup>194</sup> In *Charles Ghankay Taylor*, the SCSL exercised jurisdiction over Taylor for his actions of influencing Sierra Leonean forces which produced effects (e.g. killings, enslavement, and sexual violence) on Sierra Leone territory despite Taylor operating exclusively within Liberia.<sup>195</sup> This Court should likewise adopt an expansive approach in interpreting its jurisdictional limits to combat the rise of cross-border crimes.<sup>196</sup>

69. It cannot be argued that effects jurisdiction is contrary to the principle that a treaty binds the State parties and only these parties (*pacta tertiis nec nocent nec prosunt*), and hence should not be exercised by this Court.<sup>197</sup> This is not a valid objection as any exercise of effects jurisdiction applies vis-à-vis the *nationals* of non-State Parties; no obligation is imposed upon non-State Parties.<sup>198</sup> In *Situation in Afghanistan*, this Court affirmed that it could exercise jurisdiction over the nationals of the US, a non-State Party, where part of the conduct occurred in Afghanistan, a State Party.<sup>199</sup>

(2) *Substantial, direct and foreseeable effects occurred on the territory of Eassos, a State Party*

70. As argued above,<sup>200</sup> the proper interpretation of “conduct” Art 12(2)(a) includes effects, such that this Court is empowered to exercise effects jurisdiction. Under international law, effects jurisdiction requires the effects to have *substantial, direct, and foreseeable* effects within the

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<sup>193</sup> Shany, “The Law Applicable to Non-Occupied Gaza: A Comment on Bassiouni v Prime Minister of Israel”, 42 Isr L Rev 101, pp.111–112.

<sup>194</sup> *Mharapara* (n 180); *Taw Cheng Kong* (n 178).

<sup>195</sup> *Prosecutor v Charles Ghankay Taylor* (Judgement) SCSL-03-01-T (18 May 2012).

<sup>196</sup> Vagias, “Chapter 6 - The Effects Doctrine” in *The Territorial Jurisdiction of the International Criminal Court* (CUP, 1<sup>st</sup> Edn 2014) (“*The Territorial Jurisdiction of the International Criminal Court*”), pp.166–167.

<sup>197</sup> VCLT, Article 34.

<sup>198</sup> Cassese, “Preconditions to Exercise of Jurisdiction” in *Rome Statute of the ICC - A Commentary* (OUP, 1<sup>st</sup> Edn 2002), p.608.

<sup>199</sup> *Situation in the Islamic Republic of Afghanistan* (Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan) ICC-02/17 (12 April 2019), [50].

<sup>200</sup> See [64]–[69] above.

State Party's territory.<sup>201</sup> Such effects occurred on the territory of Eassos, a State Party to the Rome Statute.

71. *First*, the effects on Eassos were both substantial and direct. Goodrider's cover-up campaign prevented any forewarning on the viral outbreak from reaching Eassos, resulting in the spread of the highly infectious virus with a mortality rate of 34.5%.<sup>202</sup> Without any notice, Eassos was uninformed, rendering it ill-prepared to face the virus. Hence, Goodrider's cover-up directly resulted in 250,000 deaths.<sup>203</sup>
72. *Secondly*, the risks of the viral outbreak were foreseeable. From the beginning, Goodrider was warned of the "high degree of risk" that inadequate funding could lead to the virus escaping the lab.<sup>204</sup> By denying additional funding for necessary safety precautions,<sup>205</sup> the risks of this outbreak was foreseeable.
73. Accordingly, this Court can exercise effects jurisdiction under Article 12(2)(a), as the crime produced substantial, direct and foreseeable effects within the territory of Eassos, a State Party.

***B. The established jurisdictional principles in Bangladesh/Myanmar apply to the present case***

74. According to this Court in *Bangladesh/Myanmar*, effects jurisdiction may be exercised "over crimes that occurred partially on the territory of a State Party and partially on the territory of a non-State Party".<sup>206</sup> Such jurisdiction can be exercised where either one legal element of a crime,<sup>207</sup> or part of the *actus reus* of a crime occurred within State Party territory.<sup>208</sup> Applying these principles, this Court can exercise effects jurisdiction because: (1) one legal element of

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<sup>201</sup> *Tallinn Manual 2.0* (n 166).

<sup>202</sup> Decision, [3].

<sup>203</sup> *Ibid.*

<sup>204</sup> *Id.*, p.11.

<sup>205</sup> *Id.*, p.12.

<sup>206</sup> *Bangladesh/Myanmar Pre-Trial Chamber III* (n 157), [45].

<sup>207</sup> *Bangladesh/Myanmar Pre-Trial Chamber I*, (n 161), [64].

<sup>208</sup> *Ibid.*; *Bangladesh/Myanmar Pre-Trial Chamber III* (n 157), [43].

the crime occurred on the territory of Eassos; and (2) alternatively, part of the *actus reus* of the crime occurred on the territory of Eassos.

(1) *One legal element of the crime occurred on the territory of Eassos*

75. This Court can exercise jurisdiction where at least one legal element of a crime occurred on State Party territory.<sup>209</sup> Under Article 7(1)(k), the relevant legal element requires that the perpetrator inflicted serious injury by means of an inhumane act.<sup>210</sup> This Court in the PTC I decision of *Bangladesh/Myanmar* held that the infliction of serious injury and the inhumane act need not both occur within State Party territory for this Court to exercise jurisdiction.<sup>211</sup> In that case, the inhumane act of preventing the return of the Rohingya people occurred in Myanmar, a non-State Party, while the serious injury to the Rohingya people occurred within Bangladesh, a State Party.<sup>212</sup> As the concealment of a deadly virus inflicted serious injury on the residents in Eassos, jurisdiction can similarly be exercised by this Court.

(2) *Alternatively, part of the actus reus of the crime occurred on the territory of Eassos*

76. This Court can exercise jurisdiction under Article 12(2(a)) where at least part of the *actus reus* of a crime occurs on State Party territory.<sup>213</sup> Depending on the nature of the crime, its *actus reus* may encompass both the underlying act and its effects, such that this Court can exercise jurisdiction upon the occurrence of effects on State Party territory.<sup>214</sup> Such crimes include crimes where the underlying act is *necessarily* linked with its effect.<sup>215</sup> One example is the crime of murder, where the legally defined act (killing) and effect (death) necessarily occur simultaneously.<sup>216</sup> Similarly, the crime of “other inhumane act” under Article 7(1)(k) is of such a nature as its legally defined act (an inhumane act) arises from its effect (infliction of serious

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<sup>209</sup> *Bangladesh/Myanmar* Pre-Trial Chamber I, (n 161), [64].

<sup>210</sup> EOC, Article 7(1)(k).

<sup>211</sup> *Bangladesh/Myanmar* Pre-Trial Chamber I, (n 161), [77].

<sup>212</sup> *Ibid.*

<sup>213</sup> *Bangladesh/Myanmar* Pre-Trial Chamber III (n 157), [61].

<sup>214</sup> *Id.*, [50], [61].

<sup>215</sup> *Id.*, [50].

<sup>216</sup> *Ibid.*

injury).<sup>217</sup> As argued above,<sup>218</sup> serious injury was inflicted upon the population on Eassos territory. Therefore, part of the *actus reus* of the crime of “other inhumane act” occurred within State Party territory, allowing this Court to exercise jurisdiction.

77. Accordingly, the established jurisdictional principles in *Bangladesh/Myanmar* apply to the present case.

**C. *Goodrider is not entitled to immunity***

78. This Court’s jurisdiction is not barred by any immunity enjoyed by high-ranking State officials.<sup>219</sup> As repeatedly affirmed by the ICJ,<sup>220</sup> SCSL<sup>221</sup> and this Court, personal immunities are inapplicable for international crimes before international criminal tribunals.<sup>222</sup> In any event, any immunity of high-ranking State officials before this Court is waived under international custom.<sup>223</sup>

79. For the above reasons, PTC VI’s decision to exercise jurisdiction under Article 12 should be upheld.

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<sup>217</sup> EOC, Article 7(1)(k); *Blaškić* Trial Judgement (n 82), [239].

<sup>218</sup> See [42]–[44] above.

<sup>219</sup> *Prosecutor v Al-Bashir* (Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir) ICC-02/05-01/09-3 (4 March 2009), [41].

<sup>220</sup> *Arrest Warrant* (n 184), [61].

<sup>221</sup> *Prosecutor v Charles Ghankay Taylor* (Decision on Immunity from Jurisdiction) SCSL-2003-01-I (31 May 2004), [52].

<sup>222</sup> *Prosecutor v Al-Bashir* (Judgment in the Jordan Referral re Al-Bashir Appeal) ICC-02/05-01/09 OA2 (6 May 2019), [1].

<sup>223</sup> Cassese, *Cassese’s International Criminal Law* (OUP, 3<sup>rd</sup> Edn 2013), p.325; RS, Article 27(2).



## SUBMISSIONS

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Therefore, in light of the arguments above, the Prosecution respectfully requests the Appeals Chamber to adjudge and declare that:

- I.** Goodrider was not unlawfully deprived of his right to be present at the confirmation hearing under Article 61 and to represent himself under Article 67(1)(d);
- II.** The charged offences can be prosecuted as “other inhumane acts” under Article 7(1)(k) and the Prosecution has met its duty to establish with sufficient evidence that there were substantial grounds to believe that Goodrider ordered the commission of such a crime under Article 25(3)(b); and
- III.** This Court has jurisdiction to prosecute Goodrider under Article 12.

On Behalf of the Office of the Prosecutor

