

**Cour
Pénale
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**International
Criminal
Court**

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No.: ICC-01/14-01/18

Date: 6 June 2023

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
THE PROSECUTOR *v.* ALFRED YEKATOM AND
PATRICE-ÉDOUARD NGAÏSSONA**

Public

**Public Redacted Version of the “Joint Request for extension of time to file a
request for leave to present evidence”
(ICC-01/14-01/18-1905-Conf, dated 1 June 2023)**

Source: Common Legal Representatives of Victims

Document to be notified in accordance with regulation 31 of the *Regulations of the***Court to:****The Office of the Prosecutor**Mr Karim A. A. Khan KC
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Defence****States' Representatives****Amicus Curiae****REGISTRY**

Registrar

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Counsel Support Section**Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations
Section Other**

I. INTRODUCTION

1. The Common Legal Representative of the Victims Former Child Soldiers (the “CLR V1”) and the Common Legal Representatives of the Victims of Other Crimes (the “CLR V2”, together the “CLR Vs”) hereby respectfully request an extension of the time limit to file their respective requests for leave to present evidence and associated material, as well as of the deadline for disclosure of evidence.¹

2. While the CLR Vs are ready to provide a preliminary list of victims and/or witnesses to be called by 7 July 2023, they seek an extension of time of nine weeks - until 11 September 2023 - to file their respective requests for leave to present evidence, together with the final list of witnesses and the summary of their expected testimony, and to disclose all relevant evidence.

3. The requested extension of time is in accordance with the applicable timelines and practice in other cases before the Court, and will not unduly delay the proceedings. The extension is sought due to the effect of external circumstances on the CLR Vs field operations, including travel restrictions due to the security situation in certain remote areas of the Central African Republic (the “CAR”) and [REDACTED] and limited access to the places where the victims reside. The extension would allow the CLR Vs to conclude relevant consultations with their clients in the field and to properly prepare the respective requests. The CLR Vs submit that all these circumstances, considered either jointly or individually, constitute good cause in terms of regulation 35(2) of the Regulations of the Court (the “Regulations”) for granting an extension of time.

¹ See the “Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLR V and the Defence” (Trial Chamber V), [No. ICC-01/14-01/18-1892](#), 29 May 2023 (the “Further Directions”).

II. PROCEDURAL BACKGROUND

4. On 26 August 2020, the Presiding Judge of Trial Chamber V (the “Chamber”) issued the “Initial Directions on the Conduct of the Proceedings” providing for presentation of evidence by the CLRVs “*should leave to do so be granted*” (the “Initial Directions”).²

5. On 29 May 2023, the Chamber issued the “Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence)” (the “Further Directions”), *inter alia*, (i) ordering the CLRVs to file any request for leave to present evidence, including which witnesses they request leave to call with a summary of their anticipated testimony, no later than 7 July 2023; and (ii) directing to disclose any evidence the CLRVs intend to rely on during their presentation of evidence, by 18 August 2023.³

III. CLASSIFICATION

6. Pursuant to regulation 23*bis* (2) of the Regulations, the present submissions are classified as confidential because they refer to sensitive information relating to the CLRVs field operations. A public redacted version will be filed in due course.

IV. SUBMISSIONS

7. Pursuant to regulation 35 of the Regulations, the CLRVs respectfully request an extension of time until 11 September 2023 to file their respective requests for leave to present evidence and associated material, as well as to disclose any evidence they wish to rely on.

8. According to the relevant provision “*the Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an*

² See the “Initial Directions on the Conduct of the Proceedings” (Trial Chamber V, Presiding Judge), [No. ICC-01/14-01/18-631](#), 26 August 2020, para. 16 (the “Initial Directions”).

³ See the Further Directions, *supra* note 1, paras. 11-12.

opportunity to be heard [...]".⁴ The Chamber has thus the discretionary power to determine whether the grounds on which the variation of time limit is sought by an applicant show the existence of good cause for it to be granted.⁵ The Appeals Chamber clarified that "[a] *cause is good, if founded upon reasons associated with a person's capacity to conform to the applicable procedural rule or regulation or the directions of the Court. Incapability to do so must be for sound reasons, such as would objectively provide justification for the inability of a party to comply with his/her obligations*".⁶

1. The extension of time is in line with the practice in other cases and will not delay the proceedings

9. The requested extension of time is in accordance with the applicable timelines and practice in other cases before the Court, and will not unduly delay the proceedings. In this regard, the CLRVs recall that, in both the *Ntaganda* and *Al Hassan* cases, the Legal Representatives of Victims (the "LRVs") were instructed through the initial directions of the relevant Chamber to file any request to present evidence no later than respectively two⁷ and three⁸ days after the conclusion of the presentation of evidence by the Prosecution. Accordingly, in both cases the LRVs were informed almost two years in advance of the anticipated schedule on the conduct of the proceedings.⁹

⁴ See regulation 35 of the Regulations of the Court.

⁵ See the "Decision on the 'Defence Application for Extension of Time to Submit Information on Viva Voce Witnesses to be Called at the Confirmation Hearing' (Pre-Trial Chamber II, Single Judge)", [No. ICC-01/09-01/11-176](#), 11 July 2011, para. 12.

⁶ See the "Reasons for the 'Decision of the Appeals Chamber on the request of counsel to Mr. Thomas Lubanga Dyilo for modification of the time limit pursuant to regulation 35 of the Regulations of the Court of 7 February 2007' issued on 16 February 2007 (Appeals Chamber)", [No. ICC-01/04-01/06-834 OA8](#), 21 February 2007, para. 7.

⁷ See the "Decision on the conduct of proceedings" (Trial Chamber VI), [No. ICC-01/04-02/06-619](#), 2 June 2015, para. 69.

⁸ See the "Directions on the conduct of proceedings" (Trial Chamber X), [No. ICC-01/12-01/18-789-AnxA](#), 6 May 2020, para. 24.

⁹ In the *Ntaganda* case, the LRVs were in fact ordered to file any request for leave to present evidence on 23 January 2017, while the initial directions with the provisional schedule were already issued on 2 June 2015. Similarly in the *Al Hassan* case, the LRV was ordered to file any request for leave to present evidence on 15 November 2021, while the initial directions with the provisional schedule were already provided on 6 May 2020.

10. In the *Ongwen* case, the Single Judge of Trial Chamber IX instructed the LRVs to provide a preliminary list of witnesses *within two months*, and their final list of witnesses together with the justifications for granting leave to present evidence, *within three months* from the notification of his preliminary directions on the LRVs evidence presentation.¹⁰ Similarly, in the *Ntaganda* case Trial Chamber VI directed the LRVs to indicate *within two months* whether they anticipate bringing a request for leave to present evidence¹¹ and granted a further month to file it.¹² By the same token, in the *Al Hassan* case, Trial Chamber X set a deadline of *two months* for the LRV to file any request for leave to present evidence.¹³ More recently, in the *Abd-Al-Rahman* case, Trial Chamber I set out a *two months* deadline for the LRV to file a request to call evidence and/or victims to present their views and concerns.¹⁴

11. In the present case, the Initial Directions indicated that the Chamber will issue further instructions on the CLRV's presentation of evidence at a later stage.¹⁵ However, no further guidance and/or provisional timeline was given - while the recently issued Further Directions provide for a rather short timeline of a month and one week for the CLRVs to file both a request for leave to present evidence and the final list of witnesses with their summaries.

12. In light of the above, the CLRVs submit that the requested variation of time would reflect the consistent practice in the most recent cases before the Court. It would also allow sufficient time for the preparation of a meaningful presentation of evidence

¹⁰ See the "Preliminary Directions for any LRV or Defence Evidence Presentation" (Trial Chamber IX, Single Judge), [No. ICC-02/04-01/15-1021](#), 13 October 2017, paras. 3-4.

¹¹ See the "Corrigendum of 'Order setting certain deadlines related to the end of the presentation of evidence by the Prosecution', 19 October 2016, ICC-01/04-02/06-1588" (Trial Chamber VI), [No. ICC-01/04-02/06-1588](#), 12 December 2016, para. 9.

¹² See the "Order relating to the deadline for any requests by the Legal Representatives of Victims to present evidence or views and concerns of victims" (Trial Chamber VI), [No. ICC-01/04-02/06-1711](#), 11 January 2017, para. 4.

¹³ See the "Fifth decision on matters related to the conduct of proceedings: presentation of evidence by the LRVs and Defence" (Trial Chamber X), [No. ICC-01/12-01/18-1756](#), 22 September 2021, paras 5-6.

¹⁴ See the "Second Directions on the conduct of proceedings" (Trial Chamber I), [No. ICC-02/05-01/20-836](#), 15 December 2022, para. 15.

¹⁵ See the Initial Directions, *supra* note 2, para. 20.

by the Victims, being the crucial stage of the proceedings in their pursuit of the truth and justice. In addition, said extension would not impact on the expeditiousness of the proceedings and on the rights of the Defence. Should leave be granted, the presentation of the CLRVs' evidence would take place after the Chamber will call and hear one witness during the week of the 23 October 2023, as presently scheduled.¹⁶ Therefore, the Parties are expected to have sufficient time to review the final list of witnesses with relevant summaries and prepare accordingly - also considering that the amount of the material to be disclosed will be limited and likely in the range of a few dozens of pages.

2. The extension of time is necessary to allow the proper conduct of the CLRVs field operations and the preparation of a meaningful presentation of evidence by the Victims

13. The CLRVs submit that they are prevented from complying with the deadline of 7 July 2023 set by the Chamber for objective reasons, beyond their control and despite their best efforts.

14. Several participating victims have conveyed to the CLRVs concerns for their security, safety and well-being when told that further in person meetings would be necessary in order to prepare for the presentation of evidence, after the completion of the Prosecution case. The CLRVs understand that the victims' concerns stem from the volatile political and security situation in the CAR and in other places where the victims reside, particularly in [REDACTED].

15. In this regard, according to the Registry's latest report, the general situation in the CAR remains [REDACTED].¹⁷ As already transmitted to the Registry, several victims have conveyed to the CLRV1 that the Anti-Balaka are still active and armed, and that they have been approached by former Anti-Balaka elements who attempted

¹⁶ See the Furter Directions, *supra* note 1, para. 14.

¹⁷ See the "Annex to the Twelfth Periodic Report of the Registry on the Political and Security Situation in the Central African Republic", [No. ICC-01/14-01/18-1889-Conf-Anx](#), 26 May 2023, paras. 2-3.

to dissuade them from further engaging with the Court, insisting that both Accused would be released and would return to the CAR shortly.¹⁸

16. Victims have conveyed to the CLRVs their worries that their security may be endangered if more people learn about their cooperation with the Court. Furthermore, the confidential nature of the victims' involvement with the Court, sometimes kept secret even from their own families, also impacts heavily on the planning and conduct of the CLRVs field missions.

17. In addition, the mitigation of the objective security risks needs time to be dealt with and is complex, and so is the preparation of the CLRVs field missions necessary to meaningfully prepare for the presentation of evidence. Most victims reside in remote areas of the CAR [REDACTED], the logistical implications are numerous and precaution imposes that any travel in such areas is to be thoroughly organised so as to meet the highest standard of security for both the Victims and the CLRVs personnel. Moreover, as far as external counsel are concerned, the preparation of missions in the field require a minimum of four weeks' notice to the Registry.

18. Counsel representing victims of the other crimes intend to call victims and/or witnesses [REDACTED]. Counsel recall that [REDACTED]. In addition, said meetings require careful preparation in order to find suitable safe places and need to be scheduled well in advance: in most cases, up to one month notice is necessary [REDACTED]. In addition, it is recalled that the CLRV2 team is composed of five Counsel representing victims of the other crimes and careful coordination is needed to avoid duplication and ensure a meaningful presentation of evidence by all victims represented.

19. Lastly, the CLRVs note that the deadline set by the Chamber does not take into account the period of summer recess. This is usually considered the most appropriate

¹⁸ See the "Seventh Periodic Report on the Victims Admitted to Participate in the Proceedings", [No. ICC-01/14-01/18-1835](#), 11 April 2023, pp. 10-11 and 13.

period for staff supporting the CLRVs to be granted extended leave to join their respective families who live far away from Europe. While the CLRVs have already started preparing to file their requests to present evidence - they had a reasonable expectation that they would be informed sufficiently in advance and given between two and three months to finalise their work, also in light of the consistent practice in the most recent cases before the Court.¹⁹ Due to the logistical and security constraints discussed *supra*, they are unable to prepare for a meaningful presentation of evidence on behalf of Victims in such a short period of time; thus their very ability to comply with the Chamber's directions is critically affected.

20. In the circumstances, the CLRVs suggest to adopt the procedure set in the *Ongwen* case in which the legal representatives were requested to file first – for informational purposes only – a preliminary list of witnesses and an estimate of how many hours of witness examination they will require, followed by the final lists of proposed witnesses.²⁰ In the present case, the CLRVs will be able to provide by 7 July 2023 a preliminary list of witnesses, and to file by 11 September 2023 their respective requests for leave to present evidence, together with the final list of witnesses and the summary of their expected testimony, and to disclose all relevant evidence by the same date.

¹⁹ See *supra* paras. 9-10.

²⁰ See the "Preliminary Directions for any LRV or Defence Evidence Presentation" (Trial Chamber IX, Single Judge), [No. ICC-02/04-01/15-1021](#), 13 October 2017, paras. 3-4.

V. CONCLUSION

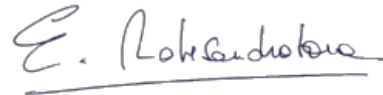
21. For the foregoing reasons, the CLRVs respectfully request the Chamber to grant an extension of time until 11 September 2023 to file their respective requests for leave to present evidence, together with the final list of witnesses and the summary of their expected testimony, and to disclose all relevant evidence by the same deadline.



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Dated this 6th day of June 2023

At The Hague (The Netherlands), La Rochelle (France) and Bangui (CAR)