

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **18 September 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 ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

**Public**

**Yekatom Defence Observations on the “Twenty-Eighth Registry  
Assessment Report on Victim Applications for Participation in Trial  
Proceedings”, 7 September 2023, ICC-01/14-01/18-2081**

**Source:** Defence for Mr. Alfred Rombhot Yekatom

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

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**REGISTRY**

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## **INTRODUCTION**

1. The Defence for Mr. Alfred Rombhot Yekatom ('Defence') hereby responds to the "Twenty-Eighth Registry Assessment Report on Victim Applications for Participation in Trial Proceedings" ('Report').<sup>1</sup> The Registry requests "an extension of time limit for the transmission of future victim applications to the end of the trial, ('Request') or in the alternative, the Chamber's authorisation to transmit all applications presently in the Registry's possession, once duly completed" ('Alternative Request').<sup>2</sup>
2. The Defence opposes the Request as the Registry does not raise new information which would warrant a reconsideration of the Chamber's decision on the cut-off date set for the transmission of victim applications.<sup>3</sup>
3. The Defence defers to the Chamber's discretion with regard to the Alternative Request for the transmission of victim applications that the Registry has, but the Defence submits that should this extension be granted, a cut-off date and parameters should be set.

## **PROCEDURAL HISTORY**

4. On 5 March 2019, the Pre-Trial Chamber II issued the "Decision Establishing the Principles Applicable to Victims' Applications for Participation" which set the admission procedure for victims' participation.<sup>4</sup>
5. On 8 April 2020, the Registry submitted the "Registry Submissions in View of the upcoming Status Conference" in which it recommended the transmission of

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<sup>1</sup> ICC-01/14-01/18-2081

<sup>2</sup> ICC-01/14-01/18-2081, para. 44.

<sup>3</sup> ICC-01/14-01/18-589, para. 20.

<sup>4</sup> ICC-01/14-01/18-141

victims application “be done in batches on a rolling basis with no “cut-off” date before the start of the trial”.<sup>5</sup>

6. On 9 July 2020, the Trial Chamber V held a status conference (‘Status Conference’) in which the Registry voiced its position and preference to have no cut-off date to be able to submit victim applications on a rolling basis, or in alternative, to have the cut-off date set until the end of the Prosecution case.<sup>6</sup>
7. On 16 July 2020, the Chamber issued its “Decision Setting the Commencement Date of the Trial” (“Decision”) in which it considered it appropriate to set a cut-off date for the transmission of victim applications which was the end of the Prosecution’s presentation of evidence.<sup>7</sup>
8. On 07 September 2023, the Registry submitted the Report in which it requested “an extension of time limit for the transmission of future victim applications to the end of the trial, or in the alternative, the Chamber’s authorisation to transmit all applications presently in the Registry’s possession, once duly completed”.<sup>8</sup>
9. On 11 September 2023, the Prosecution notified the Chamber, Parties and Participants of the completion of its direct case.<sup>9</sup>
10. On 18 September 2023, the Common Legal Representative of Victims submitted the “Common Legal Representatives of Victims’ Joint Observations on the ‘Twenty-Eighth Registry Assessment Report on Victim Applications for Participation in Trial Proceedings’” (“CLR V Observations”) in which they supported the Registry’s Request and Alternative Request.<sup>10</sup>

## **SUBMISSIONS**

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<sup>5</sup> ICC-01/14-01/18-470-Conf-AnxIII-Red, para. 23

<sup>6</sup> ICC-01/14-01/18-T-012-ENG ET, at 12:52:31

<sup>7</sup> ICC-01/14-01/18-589, para. 20.

<sup>8</sup> ICC-01/14-01/18-2081, para. 44.

<sup>9</sup> ICC-01/14-01/18-2089.

<sup>10</sup> ICC-01/14-01/18-2101.

11. As the Chamber has already ruled on the merits of request for no cut-off date for the transmission of victim applications, the Defence submits that the Registry's Request amounts to a reconsideration of the Decision. The Defence submits that the Registry did not provide new information in the Report to justify a reconsideration of the Chamber's Decision establishing the cut-off date for the transmission of victims' applications to the end of the Prosecution's presentation of evidence. The CLRV Observations in support of the Request do not raise new information which could warrant the adoption of such measure.<sup>11</sup>
12. The Chamber already ruled on the establishment of a cut-off date for the transmission of victims' applications in July 2020 in the Decision. Although the Chamber mentions that this date should have been set prior to the start of the trial to ensure that the LRV fulfil their mandate consistently during the trial, the Chamber extended the deadline to the end of the Prosecution's presentation of evidence considering difficulties caused by the Covid-19 pandemic on the reach of victims.<sup>12</sup>
13. The extension granted by the Chamber for the transmission of victims' applications has provided more than two years and a half of additional time to the Registry to collect and transmit victim applications.<sup>13</sup> In total, more than four years have passed following the date from which the Registry could start collecting applications.<sup>14</sup> The Defence is of the view that further extension of the cut-off date would go against the fair and expeditious conduct of the proceedings.
14. The Registry submits that the security situation in CAR and logistical challenges "has hindered the Registry's efforts to complete victim consultations in the

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<sup>11</sup> ICC-01/14-01/18-2101.

<sup>12</sup> ICC-01/14-01/18-589, para. 20.

<sup>13</sup> ICC-01/14-01/18-2089.

<sup>14</sup> ICC-01/14-01/18-141

Case".<sup>15</sup> It adds that the presence of relevant victim communities outside of the country which were no yet covered by the Registry's teams.<sup>16</sup> The CLRV submit that the difficulties encountered by the Registry have also similarly impacted their activities with participating victims.<sup>17</sup>

15. The delays caused by the security situation in CAR on the procedure for collecting and transmitting victims' applications were already a concern raised by the Registry at the start of the trial with its submissions favouring the transmission of applications on a rolling basis with no cut-off date.<sup>18</sup> Also, while it is unclear which communities outside of CAR the Registry have not been covered by its teams, the presence of individuals potentially eligible as participating victims outside of CAR does not appear as new information or facts recently elucidated by the Registry.
16. The Defence notes that the Registry's submissions prior to the Status conference in regard to the cut-off date included concerns on logistical, and security constraints in the application process,<sup>19</sup> as well as the presence of "number of refugee camps in neighbouring countries which host a large number of victims who would fall within the remit of the Case but which have yet to be reached out to".<sup>20</sup> Also, the LRV2 submissions at the Status Conference included the fact that a large number of victims reside outside of Bangui and that there was "a huge diaspora in Chad, in Cameroon, directly related to the events which were confirmed by the Pre-Trial Chamber".<sup>21</sup>
17. The Registry does not provide any submissions relating to security or logistical problems that were not foreseeable or already considered at the start of the trial

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<sup>15</sup> ICC-01/14-01/18-2081, para 41.

<sup>16</sup> ICC-01/14-01/18-2081, para 41.

<sup>17</sup> ICC-01/14-01/18-2101, para. 11.

<sup>18</sup> ICC-01/14-01/18-470-Conf-AnxIII-Red, paras. 16, 19-21.

<sup>19</sup> ICC-01/14-01/18-470-Conf-AnxIII-Red, paras. 16, 19-21.

<sup>20</sup> ICC-01/14-01/18-470-Conf-AnxIII-Red, para. 23.

<sup>21</sup> ICC-01/14-01/18-T-012-ENG ET, at 12:46 ; See also ICC-01/14-01/18-471, para. 35

in its Report to justify a reconsideration of the Chamber's Decision, which is an exceptional measure.

18. The Registry's argument concerning victims' interests in participating in the next stages of the proceedings was also underlying the prior request to the Chamber for a rolling-basis system of the transmission of victims' applications.<sup>22</sup> However, the Chamber already ruled on the concurring interests of victims by considering appropriate to have a limitation to the transmission of victims' applications, while stressing the necessity to facilitate the fair and expeditious conduct of the proceedings.<sup>23</sup>
19. Additionally, the extension of the deadline for the transmission of victims' applications as requested by the Registry would also imply that CLRVs presentation of evidence may not reflect entirely the views of victims to be admitted at a later stage as that they would have to review their position to reflect new views collected from newly admitted victims. As mentioned above, the Chamber indicated in the Decision that a cut-off date prior the trial ensures "that victims' counsel fulfil their mandates consistently during trial."<sup>24</sup>
20. Finally, with regard to the Alternative Request, the Defence defers to the Chamber's discretion, but it submits that if the Chamber is minded to grant an extension in relation to applications already in possession of the Registry, it should be restricted with a specific deadline and precise parameters to limit for the same reasons as stated above. The Registry fails to provide any information with regard to the nature or extent of the outstanding 'supplementary information' and further still, misrepresents the regime adopted in the *Abd Al*

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<sup>22</sup> In this regard, the Defence notes that the Registry's reliance on the Lubanga case is distinguishable to the present situation given that it was either limited to seven applications and concerned the old victim participation framework whereby applications were circulated to the parties for submissions to be made prior to the submission or concerned applications submitted solely in relation to the reparations phase of proceedings *contra* Report, fn. 63.

<sup>23</sup> ICC-01/14-01/18-589, para. 19.

<sup>24</sup> ICC-01/14-01/18-589, para. 19 ; See also *Prosecutor v. Dominic Ongwen*, Decision Setting the Commencement Date of the Trial, ICC-02/04-01/15-449, paras. 9-10.

*Rahman* proceedings.<sup>25</sup> Contrary to the Registry's submissions, an extension was only granted in that case for a period of three weeks to allow for applications to be submitted up until the close of the CLRV case (in light of the outbreak of conflict in Sudan) and it was only the translations of the applications which were to be submitted on a rolling basis with updates to be provided by the Registry. It did not concern undefined supplementary information as is the suggestion in the present case. The sparsity of the Registry's submission gives rise to unnecessary ambiguity as to the scope of the extension requested.

### **RELIEF SOUGHT**

21. In light of the above, the Defence respectfully requests Trial Chamber V to:

**REJECT** the Registry's Request.

**RESPECTFULLY SUBMITTED ON THIS 18<sup>th</sup> DAY OF SEPTEMBER 2023**



Me Mylène Dimitri  
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands

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<sup>25</sup> ICC-01/14-01/18-2081, para. 38. *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*, Trial Chamber I, "Decision on the Second Registry's Request to Extend the Time Limit to Submit Victim Applications for Participation", ICC-02/05-01/20-943, 16 May 2023