

Pursuant to Pre-Trial Chamber I's instruction dated 10.11.2023, this document is reclassified as Public

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/19
Date: **9 November 2023**

PRE-TRIAL CHAMBER I

Before: Judge Péter Kovács, Presiding Judge
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge María del Socorro Flores Liera

**SITUATION IN THE PEOPLE'S REPUBLIC OF BANGLADESH/
REPUBLIC OF THE UNION OF MYANMAR**

URGENT and CONFIDENTIAL

**Prosecution's Request pursuant to regulation 35 for an extension of the time limit
to respond to the Submission for the Adoption of a Protocol and
for Access to the Confidential Record**

Source: Office of the Prosecutor

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

Court to:

The Office of the Prosecutor

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Legal Representatives of the Applicants

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**Unrepresented Applicants for
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I. INTRODUCTION

1. The Office of the Prosecutor ("Prosecution") requests, pursuant to regulation 35 of the Regulations of the Court ("RoC"), a one week extension (to Monday 20 November) to respond to the document titled "Request for the adoption of a protocol and for access to the confidential record", dated 25 October 2023 ("Submission"), transmitted by the Registry to the Pre-Trial Chamber ("Chamber") on 2 November 2023.¹

2. There is good cause to grant the requested extension. The 10-day deadline for responding to the Submission would not allow the Prosecution a meaningful opportunity to respond fully to the Submission, given its length, the sensitivity of the matters at stake, and considering the exceptional, ongoing, Court-wide internet limitations. It is further submitted, in view of the issues raised in the Submission, that the Chamber would benefit from a considered and comprehensive response. In addition, as the requested extension is short, granting it would cause no appreciable prejudice.

3. Finally, given its brevity, the limited time frame and the lack of any appreciable prejudice, an urgent ruling on this request without further submissions would be appropriate.

II. CONFIDENTIALITY

4. Pursuant to regulation 23*bis*(2) of the RoC, this document is filed as "Confidential", as it refers to a filing of the same classification. The Prosecution does not object to the reclassification of this filing as public.

¹ Registry's Transmission of a "Request for the Adoption of a Protocol and for Access to the Confidential Record", 2 November 2023, ICC-01/19-52, with confidential annexes 1, 2 and 3. The Submission was filed by Megan Hirst, Kate Gibson, Clare Brown and Nicholas Leddy ("Submitters").

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III. SUBMISSIONS

5. Regulation 35(1) and (2) of the RoC authorises a Chamber to extend a time limit “if good cause is shown”. The Appeals Chamber has held 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.”²

A. Good cause

6. The present request is justified by good cause.

7. *First*, the Submission is extensive and touches upon sensitive matters. The Submission, which is 22 pages long, has two annexes – a 14-page proposed protocol and an eight-page explanatory guide to the proposed protocol. In addition, the purpose of the Submission is, *inter alia*, to grant the Submitters access to confidential activities and information/material in the ongoing investigation, as well as to confidential court records in this situation.³ In other words, the Submission raises issues that may have significant consequences, not just for this ongoing investigation, but for all other investigations of the Prosecution and which, therefore, require a considered and comprehensive response.

8. *Second*, considering the exceptional, ongoing internet limitations at the Court's headquarters, the OTP requires additional time to conduct the necessary analysis and research to provide a substantiated response, as well as to review the numerous hyperlinked documents referenced in the Submission.

² ICC-01/04-01/06-834, para. 7.

³ See Submission, paras. 3-4.

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9. *Third*, an extension of one week to file a response is reasonable in the circumstances. It would enable the Prosecution to thoroughly present its arguments, and so assist the Chamber in reaching its determination.

10. Finally, it is noted that – as there are currently no ongoing proceedings – allowing the Prosecution an additional week to respond to the Submission would cause no appreciable prejudice.

B. The Chamber is in a position to rule immediately

11. According to regulation 35(2) of the RoC, it is for the Chamber to decide, “where appropriate”, whether to give “the participants an opportunity to be heard” before ruling on a regulation 35 application. The Prosecution submits that the Chamber is in a position to rule on this request immediately.

12. *First*, inviting submissions may ultimately undermine the objective of the request, given that the current deadline for filing a response is Monday 13 November. Considering the request only after receiving submissions will likely delay a ruling, until it is too close to the deadline to have a beneficial or material effect.

13. *Second*, no prejudice would result from the Chamber ruling without further submissions, since the extension sought is limited to one week (to Monday 20 November) and, for the reasons stated above,⁴ would cause no prejudice.

⁴ See *supra* para. 10.

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IV. CONCLUSION

14. For the reasons set out above, the Prosecution requests that the Chamber grants the extension of one week (to Monday 20 November) to respond to the Submission.



Karim A.A. Khan KC, Prosecutor

Dated this 9th day of November 2023

At The Hague, The Netherlands