

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **8 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 ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

**Public Redacted Version of "Response to the Joint Request for extension of
time to file a request for leave to present evidence, ICC-01/14-01/18-1905-
Conf, 01 June 2023"**

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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INTRODUCTION

1. The Defence for Mr. Yekatom ("Defence") hereby responds to the Common Legal Representatives of Victims' *Joint Request for the extension of time to file a request for leave to present evidence* (respectively "CLRVs" and "Request").¹
2. The Defence notes the Request and defers to the Chamber's discretion to grant or reject the Request.
3. However, should the extension of time sought by the CLRVs be granted, the Defence requests the Chamber to amend the schedule set forth in the "Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence)" ("Further Directions"),² so as to ensure that the presentation of evidence by the CLRVs, if any, would be subject to the same extension.

PROCEDURAL HISTORY

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 that the CLRVs could present their evidence "should leave to do so be granted" (the "Initial Directions").³
5. On 11 April 2023, the Registry filed its *Seventh Periodic Report on the Victims Admitted to Participate in the Proceedings* ("Seventh Report").⁴
6. On 29 May 2023, the Chamber issued the Further Directions, inter alia, (i) ordering the CLRVs to file, by 7 July 2023, any request for leave to present evidence, including which witnesses they request leave to call with a summary

¹ [ICC-01/14-01/18-1905-Conf.](#)

² [ICC-01/14-01/18-1892](#), paras 11-12.

³ [ICC-01/14-01/18-631](#).

⁴ [ICC-01/14-01/18-1835](#).

of their anticipated testimony; and (ii) directing to disclose, by 18 August 2023, any evidence the CLRVs intend to rely on during their presentation of evidence.⁵

7. On 1st June 2023, the CLRVs filed the Request seeking an extension of nine weeks (*i.e.* until 11 September 2023) to file their respective requests for leave to present evidence, including their final list of witnesses and the summary of their expected testimony, and to disclose “all relevant evidence”.⁶

APPLICABLE LAW

8. Regulation 35(2) provides:

The Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard. After the lapse of a time limit, an extension of time may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control.⁷

9. Article 67(b) of Rome Statute states :

In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:

[...]

(b) **To have adequate time and facilities for the preparation of the defence** and to communicate freely with counsel of the accused's choosing in confidence;⁸

SUBMISSIONS

10. The Defence takes note of the Request and defers to the discretion of the Chamber in deciding on the CLRVs' sought extension of time to file a request for leave to present evidence, communicate their final list of witnesses and to disclose evidence.

⁵ [ICC-01/14-01/18-1892](#), paras 11-12.

⁶ [ICC-01/14-01/18-1905-Conf](#).

⁷ Regulation 35(2) of the Regulations of the Court, emphasis added.

⁸ Article 67(b) of the Rome Statute, emphasis added.

11. The Defence further notes that the CLRVs are not seeking an extension of deadline for the presentation of their evidence, and instead indicate that the sought extension would have no impact on the expeditiousness of the proceedings and the rights of the Defence.⁹ The Defence limits its submission to respond to the CLRVs' stance on this specific point.
12. According to the schedule set forth within the Further Directions, the CLRVs have until 7 July 2023 to file their request for leave to present evidence and their final list of witnesses, if any.¹⁰ Should leave be granted, the CLRVs would need to disclose their evidence by 18 August 2023.¹¹ On 23 October 2023, the Chamber's Witness is scheduled to testify.¹²
13. Contrary to the CLRVs,¹³ it is the Defence understanding from the Further Instructions that, if leave to present evidence is granted to the CLRVs, they are scheduled to proceed with their presentation prior to the testimony of the Chamber's Witness, *i.e.* prior to 23 October 2023. Therefore, in accordance with the current schedule, the CLRVs would proceed with the presentation of their evidence, if any, approximately three months after having communicated their final lists of witnesses and approximately two months after having disclosed the evidence they intend to rely on.¹⁴
14. The Defence submits that should the Request be granted, the schedule should be adapted in order to maintain the three months' time-period between the new deadlines and the presentation of evidence by the CLRVs. Indeed, if the CLRVs' request is granted with an extension of time until 11 September 2023, and the time-frame for their presentation of evidence is maintained, the time available to

⁹ [ICC-01/14-01/18-1892](#), para 12.

¹⁰ [ICC-01/14-01/18-1892](#), para 11.

¹¹ [ICC-01/14-01/18-1892](#), para 12.

¹² [ICC-01/14-01/18-1892](#), para 14.

¹³ [ICC-01/14-01/18-1905-Conf](#), para. 12.

¹⁴ A similar timeframe was adopted in the *Ongwen* case, see [ICC-02/04-01/15-1199-Red](#), para 82, [ICC-02/04-01/15-1166](#), [ICC-02/04-01/15-1165-Red](#) and [ICC-02/04-01/15-1570](#), para 3.

the Defence to prepare for the witnesses to be called by the CLRVs and review the disclosed evidence, would be reduced to approximately a month.

15. The Defence submits that this time period is insufficient to adequately prepare Mr Yekatom's defence and would result in a violation of the rights of the accused, in particular the above-mentioned Article 67(b) of the Rome Statute.
16. Indeed, to be adequately prepared, the Defence needs to be able to conduct its investigations and can only do so with the CLRVs final list of witnesses. The Defence appreciates the CLRVs proposal to provide a preliminary list of witnesses on the 7 July 2023,¹⁵ but considers it is an insufficient safeguard. Witnesses can be added onto a final list of witnesses and/or removed from a preliminary list, which would entail that the Defence could still be in the position of having only a month to investigate individuals called as witnesses. Further, should witnesses on the preliminary list be withdrawn from the final list, the Defence will have effectively wasted its limited time and resources in investigating them; this, during a period in which the Defence will itself be under substantial time and resources constraints, in preparing for defence case-related deadlines of its own.
17. Furthermore, the difficulties faced by the Common Legal Representatives of the Victims of Other Crimes ("CLR2") to conduct their field operations will also apply to the Defence. For instance, should the CLR2 call a witness residing [REDACTED],¹⁶ the Defence will need time and resources to conduct its own investigations with regard to such a witness possibly facing the same difficulties as the CLR2.
18. Regarding the Common Legal Representative of the Victims Former Child Soldiers ("CLR1"), the Defence takes note of the Registry Report in which the

¹⁵ [ICC-01/14-01/18-1905-Conf](#), paras. 2 and 20.

¹⁶ [ICC-01/14-01/18-1905-Conf](#), para. 14.

CLR1 indicated that after their three missions conducted in February and March 2023, it “continued holding regular remote meetings with the victims on a bi-weekly basis, in group gathered in the respective communities”,¹⁷ that “victims remained consistently interested to participate in information sessions,”¹⁸ and that they “appreciated the CLR1’s efforts to come to the places they reside and expressed their wish for such activities be carried out as frequently as possible”.¹⁹ In light of this, the Defence observes that, contrary to the CLR2, the CLR1 appears to have easy access to their potential witnesses. The Defence defers to the discretion of the Chamber as to whether or not good cause also applies for CLR1 who appears to not be facing the same difficulties as CLR2.

19. However, the Defence’s experience in investigating testimonies regarding alleged child soldiers in the Lobaye Prefecture has revealed itself to be time consuming and resource intensive. Accordingly, once the CLR1 provide a final list of witnesses, the Defence would need adequate time to have a real opportunity to investigate the identity of CLR1’s witnesses through family relationships and evidentiary documents.
20. Should the Chamber find good cause and grant the extension of time to the CLRVs giving them three months to conduct their last field operations after years of preparation, it would be incongruent to then expect the Defence, in all fairness, to benefit from a single month to prepare its Defence in relation to the CLRVs presentation of evidence.
21. Moreover, although the CLRVs indicate that the material to be disclosed “will be limited and likely in the range of a few dozens of pages”,²⁰ there is no indication as to the number of witnesses likely to be called. Further, the CLRVs indicate that

¹⁷ [ICC-01/14-01/18-1835](#), p. 10.

¹⁸ [ICC-01/14-01/18-1835](#), p. 10.

¹⁹ [ICC-01/14-01/18-1835](#), p. 10.

²⁰ [ICC-01/14-01/18-1905-Conf](#), para 12.

they have yet to complete their field operations,²¹ which would likely impair their ability to evaluate with certainty the amount of material they will be disclosing once those operations are conducted.

22. In order to enable an adequate preparation of its defence and avoid any violation of the rights of the accused, the Defence requests the Chamber to maintain the same time-period the Chamber originally provided for between the CRLVs' disclosure of its final list of witnesses and evidence, and the start of the CLRVs' presentation of evidence, by delaying the CLRVs' presentation of evidence by nine weeks and/or the given same extension.

CONFIDENTIALITY

23. The present request is filed on a confidential basis due to the classification of the submission it responds to. A public redacted version of the document will be filed in due time.

RELIEF SOUGHT

24. In the event that the Chamber is minded to grant the deadline extensions sought in the Request, the Defence respectfully requests that the Chamber:

AMEND the Further Directions to ensure that any presentation of evidence by the CLRVs would also be subject to the same extension.

RESPECTFULLY SUBMITTED ON THIS 8th DAY OF JUNE 2023²²



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²¹ [ICC-01/14-01/18-1905-Conf](#), paras 13 and following.

²² The Defence is thankful to legal consultant Ms Fiona Houdin for her precious assistance in the drafting of this filing.