

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/21
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PRE-TRIAL CHAMBER I

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

SITUATION IN THE REPUBLIC OF THE PHILIPPINES

Public

Public redacted version of "Second request for extension of page limit for article 15(3) request", 4 May 2021, ICC-01/21-5-SECRET-Exp

Source: Office of the Prosecutor

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

The Office of the Prosecutor
Mr James Stewart

Counsel for Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar
Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other (Witness Counsel)

Introduction

1. The Office of the Prosecutor ("Prosecution") hereby submits its second request for an extension of the applicable page limit for the upcoming request to authorise an investigation into the situation in the Philippines ("Request"), this time providing a fuller statement of details to demonstrate that the exceptional circumstances test prescribed in regulation 37(2) of the Regulations of the Court ("Regulations") is met. In this new request, the Prosecution seeks an extension of the applicable page limit by 42 pages.

Confidentiality

2. Pursuant to regulation 23*bis* of the Regulations, this filing is classified secret *ex parte*, only available to the Prosecution, [REDACTED]. Moreover, this filing refers to other filings with the same classification.

Submissions

3. This Pre-Trial Chamber on 29 April 2021 rejected¹ the Prosecution's application² to extend the page limit for its upcoming request to open an investigation into the situation in the Philippines by 50 pages. The Pre-Trial Chamber found that the Prosecution's application failed to explain why the complexity of the factual and legal issues contained in the upcoming Request could not be sufficiently addressed within the 60-page limit prescribed by regulation 38(2)(e) of the Regulations.³
4. The Prosecution regrets its failure to address the exceptional circumstances test contained in regulation 37(2) of the Regulations to the Pre-Trial Chamber's satisfaction. It intends to remedy that omission in this new application by providing more detailed reasons why the complexity of the factual and legal

¹ ICC-01/21-4-SECRET-Exp.

² ICC-01/21-2-SECRET-Exp.

³ ICC-01/21-4-SECRET-Exp, para. 4.

issues contained in the Request cannot be sufficiently addressed within the 60-page limit.

5. The Prosecution's Request will address a number of complex legal and factual issues requiring detailed discussion. It will demonstrate that there is a reasonable basis to believe that the Crimes Against Humanity of Murder, Torture, and Other Inhumane Acts have been committed on the territory of the Philippines in the context of the so called "war on drugs" carried out by the Government of the Philippines from 1 July 2016 until 16 March 2019. It will also address similar crimes allegedly committed in the city and region of Davao during the period from 1 November 2011, and argue that those crimes are sufficiently linked to the 2016-2019 events to be included in the temporal scope of the requested investigation.
6. In justifying the Prosecution's application for authorisation to proceed, and in particular to satisfy the contextual elements for Crimes Against Humanity, the Request will provide an overview of a large number of incidents in which civilians have allegedly been unlawfully executed either a) during official law enforcement operations or b) outside official police operations but in circumstances suggesting links to law enforcement. Specifically, to demonstrate a course of conduct, the Request will discuss alleged killings that occurred within five types of official police operations: purported "buy-bust" operations; in the course of house-to-house visits; during "sweeps" or large-scale operations; in the context of operational activities such as checkpoints, raids, arrest or search and seizure operations; and while victims were in police custody or in detention. The Request will also describe the characteristics of killings committed outside official police operations, and assess evidence that such killings are also attributable to State actors. To demonstrate clear patterns in the killings, the Request will analyse multiple individual incidents within each type of operation, and also reference estimates of the overall number of such killings (in the

thousands), based on statistics generated by the Philippine authorities and the analysis of non-governmental organisations. The Prosecution will contrast the information presented by the Philippine authorities and the information gathered by independent sources relied upon by the Prosecution for these incidents, including as they relate to government claims of “self-defence” and allegations that law enforcement personnel systematically tampered with or falsified evidence. The scale of the alleged criminality has required the Prosecution to review a large body of documentation, and the Request itself will reference over 500 factual sources.

7. The analysis in the Request is further complicated by the diversity of actors and agents involved in the commission of the alleged crimes. In order to present the Pre-Trial Chamber with the requisite information pursuant to regulation 49(2)(c) of the Regulations, the Prosecution will address the role and actions of multiple law enforcement entities and other state actors at the national, regional, and local levels, as well as of so-called “vigilantes” – nominally non-State actors who are nevertheless often closely linked with law enforcement personnel, allegedly receiving targets, instructions, compensation, and encouragement from police and government officials.
8. An additional element of complexity stems from the fact that the Prosecution is, for the first time, seeking authorisation to investigate crimes allegedly committed during an official law enforcement campaign of a State during peace-time; a campaign which, in the Prosecution’s assessment, involved deliberate criminal activity. This requires a detailed analysis of the parameters of the campaign and actions of the alleged perpetrators. Relatedly, it makes the presentation of findings on the contextual elements of Crimes Against Humanity more complex than in other cases.
9. Finally, the Request will address legal issues related to the exercise of the Court’s jurisdiction in light of the Philippines’ withdrawal from the Rome Statute

effective 17 March 2019, as well as claims that the victims of the alleged crimes were killed in self-defence. The latter claims are exceptionally relevant, even at this early stage, because of the specific circumstances of this situation, and their potential relevance to the contextual elements of Crimes Against Humanity, as explained in the Request.

10. In conclusion, the Prosecution aims to furnish the Pre-Trial Chamber with the minimum necessary information to properly assess the merits of the Request.⁴ While the Prosecution is mindful of the nature and purpose of the stage of proceedings, the applicable threshold, and the need for concision, the complexity of the factual and legal issues in the Request are such that they cannot be sufficiently addressed in 60 pages. The Prosecution submits that an extension of 42 pages (amounting to a total of 102 pages) is reasonable in light of the circumstances of this situation and the nature and manner of the alleged crimes and perpetrators.⁵
11. The Prosecution hopes it has remedied its prior failure to sufficiently address the exceptional circumstances test contained in regulation 37(2). The Prosecution has also made further attempts to streamline the Request and is now asking for a lesser extension of 42 pages, as opposed to the 50 pages requested previously. Should the Chamber require further justification, the Prosecution stands ready to provide any additional information that the Chamber deems necessary.

⁴ *Situation in the Republic of Burundi*, Decision on the Prosecutor's Request for Extension of the Page Limit, ICC-01/17-4, 9 November 2017, para. 3.

⁵ Such an extension would also appear to be in line with the Court's past jurisprudence for this type of request. See, e.g., *Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar*, Decision on the Prosecutor's Request for an Extension of the Page Limit, ICC-01/19-5, 28 June 2019 (authorizing 146 pages); *Situation in the Republic of Burundi*, Decision on the Prosecutor's Request for Extension of the Page Limit, ICC-01/17-4, 9 November 2017, para. 2 (authorizing 90 pages); *Situation in the Islamic Republic of Afghanistan*, Decision on the Prosecutor's Request for Extension of the Page Limit, ICC-02/17-5, 9 November 2017, para. 5 (authorizing 195 pages).

Relief Sought

12. For reasons set out above, the Prosecution respectfully requests the Pre-Trial Chamber to grant an extension of the page limit for the upcoming article 15(3) request by an additional 42 pages (amounting to a total of 102 pages), pursuant to regulations 37(2) and 38(2)(e) of the Regulations.



James Stewart, Deputy Prosecutor

Dated this 16th day of June 2021

At The Hague, The Netherlands