

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No. **ICC-PTCI-01/21**

Date: **11 May 2021**

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 REPUBLIC OF THE PHILIPPINES

SECRET

Ex parte, only available to the Prosecutor

**Decision on the Prosecutor's Second request for extension of page limit for
article 15(3) Request**

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representative

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER I (the ‘Chamber’) of the International Criminal Court (the ‘Court’) issues this Decision on the Prosecutor’s Second request for extension of page limit for article 15(3) Request.

I. PROCEDURAL HISTORY

1. On 16 March 2021, the Presidency of the Court recomposed the Chamber and assigned the following situations to it: Democratic Republic of the Congo; Libya; Republic of Mali; Gabonese Republic; Registered Vessels of Comoros, Greece and Cambodia; Palestine; People’s Republic of Bangladesh and the Republic of the Union of Myanmar; Plurinational State of Bolivia; Georgia; Bolivarian Republic of Venezuela I and Bolivarian Republic of Venezuela II.¹

2. On 19 April 2021, the Presidency also assigned, with immediate effect, the situation in the Republic of the Philippines to the Chamber.²

3. On 29 April 2021, the Chamber rejected the Prosecutor’s ‘Request for extension of page limit for article 15(3) Request’ filed on 20 April 2021 (the ‘29 April 2021 Decision’ and the ‘Prosecutor’s 20 April 2021 Request’ respectively).³

4. On 4 May 2021, the Chamber received the Prosecutor’s ‘Second request for extension of page limit for article 15(3) Request’ (the ‘Prosecutor’s Request’ or the ‘Prosecutor’s Second Request for Extension of Page Limit’).⁴

II. DETERMINATION BY THE CHAMBER

5. The Chamber recalls that in its 29 April 2021 Decision, it noted that the Prosecutor’s 20 April 2021 Request did not specifically address the exceptional circumstances test contained in regulation 37(2) of the Regulations of the Court (the ‘Regulations’) and in particular that said request did not provide adequate reasoning as to why ‘[t]he complexity of the factual and

¹ ICC-Pres-01/21, pp. 6-7, 9.

² Decision on the assignment of the situation in the Republic of the Philippines, ICC-01/21-1-SECRET-Exp.

³ Decision on the Prosecutor’s Request for extension of page limit for article 15(3) Request, ICC-01/21-4-SECRET-Exp; Request for extension of page limit for article 15(3) Request, 20 April 2021, ICC-01/21-2-SECRET-Exp.

⁴ ICC-01/21-5-SECRET-Exp.

legal issues contained in the [article 15(3)] Request' cannot be addressed sufficiently within the 60 page limit provided for in regulation 38(2)(e) of the Regulations.⁵

6. The Prosecutor indicates that it 'intends to remedy that omission in this new application by providing more detailed reasons why the complexity of the factual and legal issues contained in the [article 15(3)] Request cannot be sufficiently addressed within the 60-page limit'.⁶

7. The Prosecutor submits that her article 15(3) Request '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' and that 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'.⁷ The Prosecutor refers to 'the 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'.⁸ She submits that '[t]he analysis in the [article 15(3)] Request is further complicated by the diversity of actors and agents involved in the commission of the alleged crimes'⁹ and contends, *inter alia*, that one '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'.¹⁰ The Prosecutor submits that '[t]his requires a detailed analysis of the parameters of the campaign and actions of the alleged perpetrators' and that '[r]elatedly, it makes the presentation of findings on the contextual elements of Crimes Against Humanity more complex than in other cases.'¹¹

⁵ 29 April 2021 Decision, para. 4.

⁶ Prosecutor's Request, para. 4.

⁷ Prosecutor's Request, para. 5.

⁸ Prosecutor's Request, para. 6.

⁹ Prosecutor's Request, para. 7.

¹⁰ Prosecutor's Request, para. 8.

¹¹ Prosecutor's Request, para. 8.

8. The Chamber notes that, although it is not presented in these terms, the Prosecutor's Second Request for Extension of Page Limit constitutes, in essence, a request for reconsideration. It is the Chamber's view that the Prosecutor cannot just remedy her failure to substantiate her claim that exceptional circumstances exist within the meaning of regulation 37(2) of the Regulations, by simply submitting a second request. The Chamber notes in this regard that it has already made a binding decision on the issue of page extension.¹²

9. As regards reconsideration of prior decisions, the Chamber recalls that some Chambers have rejected all requests seeking reconsideration of previous decisions, concluding that there is no legal basis for such requests in the Court's statutory framework.¹³ The Chamber observes, however, that more recent jurisprudence suggests that Chambers do have a such power based on articles 64(2) and 67 of the Statute¹⁴ while noting that the Appeals Chamber has not yet addressed the circumstances under which it may reconsider prior decisions.¹⁵ Furthermore, the Chamber notes that the existing jurisprudence sets a high threshold for a Chamber to reconsider its prior decisions: reconsideration is exceptional and should only take place if a clear error of

¹² See also Trial Chamber IX, which noted, in the context of leave to appeal applications, '[t]o entertain [...] [complementary] arguments after an adverse ruling challenges the basic principles of judicial finality' (*The Prosecutor v. Dominic Ongwen*, "Decision on Request for Leave to Appeal the Decision on Defence Request for Disclosure of Certain RFAs and Related Items", 14 February 2018, ICC-02/04-01/15-1179, para. 7.)

¹³ See e.g. Pre-Trial Chamber II, *The Prosecutor v. Joseph Kony et al.*, "Decision on the Prosecutor's Position on the Decision of Pre-Trial Chamber II to Redact Factual Descriptions of Crimes from Warrants of Arrest, Motion for Reconsideration and Motion for Clarification", 28 October 2005, ICC-02/04-01/05-60, para. 18; Pre-Trial Chamber I, *The Prosecutor v. Germain Katanga*, "Decision on the Defence for Mathieu Ngudjolo Chui's Request concerning translation of documents", 15 May 2008, ICC-01/04-01/07-477, p. 5; *The Prosecutor v. Thomas Lubanga Dyilo*, "Decision on the Prosecution motion for reconsideration", 23 May 2006, ICC-01/04-01/06-123 p. 3; Pre-Trial Chamber II, *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta And Mohammed Hussein Ali*, "Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute", 30 May 2011, ICC-01/09-02/11-96, para. 38; and Pre-Trial Chamber II, *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey And Joshua Arap Sang* "Decision on the 'Prosecution's Application for Extension of Time Limit for Disclosure", 10 May 2011, ICC-01/09-01/11-82, para. 11.

¹⁴ Trial Chamber X, *The Prosecutor v. Al Hassan*, Decision on Defence request for reconsideration, or leave to appeal the 'Fourth decision on matters related to the conduct of proceedings', 2 March 2021, ICC-01/12-01/18, para. 4; The Presidency, *The Prosecutor v. Bosco Ntaganda*, Decision on the "Request for Reconsideration of the Decision of the Judges Concerning Judge Ozaki Pursuant to Article 40 of the Rome Statute" (ICC-01/04-02/06-2337) and the "Request for Reconsideration of 'Decision concerning the "Request for disclosure concerning the Decision of the plenary of Judges on the judicial independence of Judge Ozaki", the "Request for disclosure concerning the visit of the Registrar to Japan on 21 and 22 January 2019"' (Filing #2336), and for Additional Disclosure" (ICC-01/04-02/06-2339) and related requests, 14 May 2019, ICC-01/04-02/06, para. 26: '[T]he Presidency notes that [...] it is well recognised before this Court that reconsideration of a decision may be considered in certain exceptional circumstances'. See also, *infra*, footnote 16.

¹⁵ Decision on Mr Ntaganda's request for reconsideration of the decision on time and page extensions, 1 October 2019, ICC-01/04-02/06-2426 (the 'Decision on Mr Ntaganda's request for reconsideration').

reasoning has been demonstrated or if it is necessary to do so to prevent an injustice. New facts and arguments arising *since* the decision was rendered may be relevant to this assessment.¹⁶

10. The Chamber does not consider that the Prosecutor has demonstrated a clear error of reasoning or that reconsideration is warranted to prevent an injustice. Furthermore, the Chamber notes that the arguments presented in the Prosecutor's Second Request for Extension of Page Limit were known to the Prosecutor at the time of filing her first request. As a result, the Chamber finds it unnecessary to reconsider its previous decision on the issue of page extension.

11. More broadly and regardless of whether the Prosecutor's Second Request for Extension of Page Limit constitutes a formal request for reconsideration or, as the case may be, a new request, the Chamber finds that the Prosecutor's submissions do not constitute exceptional circumstances within the meaning of regulation 37(2) of the Regulations. As a result, an extension of the page limit or a modification of its earlier decision is not warranted. In the Chamber's view, all article 15(3) requests by their very nature will likely comprise complex legal and factual issues. The complexity of such requests, however, is reflected by the accorded page limit under regulation 38(2)(e) of the Regulations, which is 60 pages, as opposed to the general 20 page limit for filings before the Court pursuant to regulation 37(1) of the Regulations. In this context, the Chamber recalls that at this stage of the proceedings the evidentiary standard is 'a reasonable basis to proceed', which is the lowest standard of proof under the Rome Statute. The Chamber considers that the applicable threshold should indeed be factored in when drafting an article 15(3) request.¹⁷

12. As a final matter, the Chamber considers it appropriate to underscore the importance of compliance with all relevant procedural requirements applicable before the Court. Adherence

¹⁶ See e.g. Trial Chamber X, *The Prosecutor v. Al Hassan*, 9 April 2020, ICC-01/12-01/18-734, para. 11, referring to Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on Request for Reconsideration of the Order to Disclose Requests for Assistance, 15 June 2016, ICC-02/04-01/15-468, para. 4; Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba et al.*, Decision on Defence Request for Reconsideration of or Leave to Appeal 'Decision on "Defence Request for Disclosure and Judicial Assistance"', 24 September 2015, ICC-01/05-01/13-1282, para. 8; Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Decision on the Prosecution's request for reconsideration or, in the alternative, leave to appeal, 18 March 2015, ICC-01/04-02/06-519, para. 12; Trial Chamber V(A), *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on the Sang Defence's Request for Reconsideration of Page and Time Limits, 10 February 2015, ICC-01/09-01/11-1813, para. 19; Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on the defence request to reconsider the "Order on numbering of evidence" of 12 May 2010, 2 April 2011, ICC-01/04-01/06-2705, para. 18: '[I]t is well established that a court can depart from earlier decisions that would usually be binding if they are manifestly unsound and their consequences are manifestly unsatisfactory'.

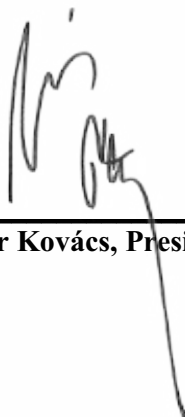
¹⁷ See Prosecutor's Request, para. 10.

to these requirements ensures legal certainty and finality in judicial decisions. It is also crucial to decide cases in a fair and consistent manner as well as for purposes of achieving 'the orderly administration of justice'.¹⁸

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Prosecutor's Second Request for Extension of Page Limit.

Done in both English and French, the English version being authoritative.



Judge Péter Kovács, Presiding Judge



**Judge Reine Adélaïde Sophie
Alapini-Gansou**



**Judge María del Socorro
Flores Liera**

Dated this Tuesday, 11 May 2021

At The Hague, The Netherlands

¹⁸ Pre-Trial Chamber I, *The Prosecutor v. Callixte Mbarushimana*, "Decision on 'Second Defence request for interim release'", No. ICC-01/04-01/10-319, 28 July 2011, p. 6. *See also* the 'Decision on Mr Ntaganda's request for reconsideration', in which the Appeals Chamber varied the briefing schedule and granted Mr. Ntaganda an extension of time 'on an exceptional basis' (para. 8).