

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-01/18**  
Date: **20 March 2020**

**PRE-TRIAL CHAMBER I**

**Before:** Judge Péter Kovács, Presiding Judge  
Judge Marc Perrin de Brichambaut  
Judge Reine Adélaïde Sophie Alapini-Gansou

**SITUATION IN THE STATE OF PALESTINE**

**Public**

**Request for an extension of time to submit written observations**

**Source:** Legal Representative of Victims

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

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**Counsel for the Defence**

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
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**States' Representatives**

The competent authorities of the State of  
Palestine

The competent authorities of the State of  
Israel

**Amicus Curiae**

All *amicus curiae* parties

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**REGISTRY**

**Registrar**

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Mr Nigel Verill

**Detention Section**

**Victims Participation and Reparations  
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## I. INTRODUCTION

1. These submissions are filed by the Legal Representative of Victims (“LRV”) pursuant to Regulation 35 of the Regulations of the Court. The LRV respectfully requests an extension of time to file written observations on the question of the Court’s jurisdiction in the Situation in the State of Palestine. For the reasons set out below, the LRV seeks an extension of the deadline set out in the Pre-Trial Chamber’s Order of 28 January 2020 for a period of 21 days, until 6 April 2020.
2. This extension of time is requested on behalf of three victims: Muetasim Murtajaa, who is the brother of **Yaser Murtaja** (journalist, shot and killed 6 April 2018 at the Israel-Gaza border); Deyaa Abu Hussein, who is the brother of **Ahmad Abu Hussain** (photojournalist, shot on 13 April 2018 at the Israel-Gaza border and died from wounds on 25 April 2018); and **Muath Amarneh** (photographer, shot and blinded in one eye at the Israel-Gaza border on 15 November 2019). The LRV has authorisation to act for the victims, copies of which have been provided to the Registry.
3. While the LRV strictly acts before the Court only for these three victims and makes these submissions on their behalf, it is noteworthy that the harm they have suffered is representative of the many journalists who have been targeted and killed for their work reporting on events in Palestine, including reporting on the commission of international crime. The LRV is in a position to make submissions on this broader pattern because she is assisted in her representation of the victims by the Palestinian Journalists Syndicate (PJS) and the International Federation of Journalists (IFJ). The PJS is an independent trade union, and the voice for journalism and journalists across the West Bank and Gaza. It currently has some 2000 members and represents journalists (including photographers and creative artists) throughout the media industry. The PJS is a constituent member of the IFJ, which is the world’s largest organisation of journalists, representing 600,000 media professionals from 187 trade unions and associations in more than 140 countries.<sup>1</sup> The PJS and IFJ are supporting the three victims to participate in these proceedings.

<sup>1</sup> *International Federation of Journalists*. ‘About IFJ: The Global Voice of Journalists’ <https://www.ifj.org/who/about-ifj.html>

4. The LRV was instructed on 16 March 2020 and wrote to the Pre-Trial Chamber (“the Chamber”) seeking an extension of time.<sup>2</sup> The Chamber indicated that the request should be made by formal submission.<sup>3</sup>

## II. PROCEDURAL HISTORY

5. On 28 January 2020, the Chamber issued an Order setting the procedure and the schedule for the submission of observations on the Prosecutor’s Request under article 19(3) of the Rome Statute related to the scope of the Court’s territorial jurisdiction in the Situation in the State of Palestine.<sup>4</sup>
6. In this decision, the Chamber, *inter alia*, “invite[d] Palestine and victims in the Situation in the State of Palestine to submit written observations on the Prosecutor’s Request of no more than 30 pages by no later than 16 March 2020”, in accordance with paragraph 13 of the Order which clarifies that “[s]uch observations shall be limited to the question of jurisdiction set forth in paragraph 220 of the Prosecutor’s Request and shall not address any other issues arising from this Situation” (para. 13 and page 7, lit. (a)).

## III. REQUEST FOR EXTENSION OF TIME

7. Under Regulation 35(2) of the Regulations of the Court (the “Regulations”), “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.”
8. In addition, Chambers of the Court have confirmed that even where not all requirements of Regulation 35(2) are met, a Chamber retains discretion to grant an extension of the time limit, including in the interests of justice.<sup>5</sup>

<sup>2</sup> Robinson, Jennifer. “Urgent request for extension of deadline for victim submissions.” Email to Court Management-Court Records ([judoc@icc-cpi.int](mailto:judoc@icc-cpi.int)). 16 March 2020 (15:06).

<sup>3</sup> Court Management-Court Records. “RE: Urgent request for extension of deadline for victim submissions.” Email to Jennifer Robinson. 16 March 2020 (16:51).

<sup>4</sup> *Situation in the State of Palestine*, [Order setting the procedure and the schedule for the submission of observations](#), ICC-01/18, 28 January 2020.

<sup>5</sup> See, eg, *Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui*, [Decision on the Prosecution Motion for leave to disclose and add the investigator’s report concerning Witness P-268 to the List of Incriminating Evidence](#), ICC-01/04-01/07-2325-Red, 27 September 2010, para. 15.

9. In this Request, the LRV submits that (a) there is good cause to extend the time limit, and that (b) the LRV was unable to file the submissions within the time limit for reasons outside her control. Further and in the alternative, the LRV submits that (c) it is in the interests of justice that the victims be permitted participate in these proceedings.

*(a) Good cause is shown to extend the time limit*

10. The Appeals Chamber has held that “[s]uch reasons as may found a good cause are necessarily associated with a party’s duties and obligations in the judicial process. 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”.<sup>6</sup>
11. Following the receipt of formal instructions on 16 March 2020, the LRV advised the victims of their ability to participate in the Situation in the State of Palestine on that same date. The deadline for submissions was 16 March 2020.
12. While the time limit had not yet lapsed on 16 March 2020, it was not possible for the LRV to file appropriately prepared observations on the same day she received instructions. In this regard, the Chambers have recognised that the need “to receive as elaborate, clear and relevant submissions as possible”<sup>7</sup> on “the important and complex issues at stake [which] necessitate proper preparation”<sup>8</sup> can constitute good cause.
13. In view of the deadline, the LRV wrote immediately to the Chamber to seek a short extension of time of 14 days to enable her clients to participate in these proceedings.

<sup>6</sup> *Prosecutor v Thomas Lubanga Dyilo*, [Reasons for the ‘Decision of the Appeals Chamber on the request of counsel to Mr. Thomas Lubanga Dyilo for modification of the time limit pursuant to Regulation 35 of the Regulations of the Court](#), No. ICC-01/04-01/06-834, 21 February 2007, para.7.

<sup>7</sup> *Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui*, [Decision on the Prosecutor’s application for an extension of time to file submissions on the legal re-characterisation pursuant to article 25\(3\)\(d\) of the Statute](#), No. ICC-01/04- 01/07-3340-tENG, 23 January 2013, para. 8.

<sup>8</sup> *Prosecutor v Thomas Lubanga Dyilo*, [Decision on the application by Counsel for Mr. Thomas Lubanga Dyilo to extend the time limit for the filing of the response to the Prosecutor’s document in support of the appeal](#), No. ICC-01/04-01/06-190, 11 July 2006, para. 5.

14. Further, the difficulties of obtaining instructions and preparing and filing such observations were, and continue to be, compounded by the unfolding Coronavirus (COVID-19) pandemic, which has placed significant added burden on the LRV in terms of obtaining instructions and signed authorisations from the clients in Palestine this week.

*(b) Counsel was unable to file for reasons beyond her control*

15. The Appeals Chamber has held that the exception of Regulation 35(2) (last sentence) is only available where an applicant can show the existence of “*exceptional circumstances*” to demonstrate that there is a reason outside her control.<sup>9</sup>
16. The reasons for which the LRV was unable to prepare and file the observations by the relevant time limit — namely, the receipt of instructions on the day of the time limit and the impacts associated with COVID-19 — were both beyond her control and, particularly in relation to the latter, truly exceptional. For the same reasons, the LRV was also unable to file an appropriately prepared request for an extension of time prior to the expiry of the time limit.
17. In relation to the wholly exceptional impact of COVID-19 on the preparation for and conduct of judicial proceedings, the LRV notes that numerous courts and tribunals around the world have implemented time limit variations in recognition of the exceptional difficulties currently faced by legal practitioners. For example, on 16 March 2020, the European Court of Human Rights announced that the six-month time limit for the lodging of applications, and all other time limits in pending proceedings, would be “*exceptionally suspended for a one-month period*” from that date.<sup>10</sup>
18. The LRV also notes that the Court building was forced to close on Tuesday 17 March 2020, as part of a nation-wide “*lockdown*” in the Netherlands. While this closure took place after the expiry of the relevant time limit, it serves to highlight the exceptional nature of the present circumstances.

<sup>9</sup> *Prosecutor v Thomas Lubanga Dyilo*, [Reasons for the Decision of the Appeals Chamber on the request of counsel to Mr. Thomas Lubanga Dyilo for modification of the time limit pursuant to regulation 35 of the Regulations of the Court](#), ICC-01/04-01/06-834, 21 February 2007, para. 9.

<sup>10</sup> *European Court of Human Rights*, [Press Release](#) (16 March 2020).

19. Given that the LRV received instructions on the day of the deadline, this is not a situation in which Counsel could have been aware that she would have to complete an action well before the lapsing of the time limit.<sup>11</sup>

*(c) Residual discretion to extend the time limit*

20. Further, the LRV requests that the Chamber take particular note of the importance victims' participation in the proceedings of the Court, including during this preliminary stage of proceedings. The participation of victims is one of the key features of the Rome Statute of the International Criminal Court and is found in Article 68 (3), which establishes: "*Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.*"
21. The importance of the participation of victims in the current phase of proceedings in the Situation in the State of Palestine is also clear from the language of the Order, which explicitly invited victims to submit written observations.
22. While the current procedural phase is still one of preliminary examination and focused solely on the question of the Court's territorial jurisdiction, the LRV submits that the participation of the victims group remains of the utmost importance. The personal interests of these victims are deeply affected by, and inextricably linked to, the determination of the Court's jurisdiction and their participation in these proceedings must thus be facilitated to the greatest extent possible. Indeed, this Chamber has itself previously recognised that victims have a particular interest at this stage of proceedings, since "*victims' rights both to participate in the proceedings and to claim reparations are entirely dependent on the Prosecutor starting an investigation or requesting authorisation to do so.*"<sup>12</sup>
23. Further, as journalists targeted in Palestine for their work as reporters (or their bereaved family members), the victims offer a unique perspective on the Situation in the State of

<sup>11</sup> *C.f. Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui*, [Decision on the disclosure of evidentiary material relating to the Prosecutor's site visit to Bogoro on 28, 29 and 31 March 2009](#) (ICC-01/04-01/07-1305, 1345, 1360, 1401, 1412 and 1456), ICC-01/04-01/07-1515-Corr, 9 October 2009.

<sup>12</sup> *Request under Regulation 46(3) of the Regulations of the Court*, [Decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19\(3\) of the Statute"](#), ICC-RoC46(3)-01/18-37, 6 September 2018, para.88.

Palestine and the particular issues affecting journalists, including their ability to report and document the actions of the authorities and other actors in Palestine and Israel to be able to hold them responsible for their crimes.

24. As Professor Ben Saul has observed, “[m]edia reporting of armed conflict and other situations of heightened violence has become increasingly perilous, with large numbers of journalists and other media personnel killed or deliberately targeted because of their professional work.”<sup>13</sup> Following an unprecedented debate in December 2006 on the protection of journalists in armed conflict, the United Nations Security Council unanimously adopted Resolution 1738. The Security Council recalled that “journalists, media professionals and associated personnel engaged in dangerous professional missions in areas of armed conflict shall be considered civilians and shall be respected and protected as such.”<sup>14</sup> Further, it emphasised that under international humanitarian law “attacks intentionally directed against civilians constitute war crimes” and urged “all parties involved in situations of armed conflict to respect the professional independence and rights of journalists, media professionals and associated personnel as civilians.”<sup>15</sup>
25. Despite such emphasis, and the existence of protections as civilians in armed conflict and under international human rights law, “attacks on journalists continue, and impunity for those who attack them often remains unaddressed.”<sup>16</sup> The treatment of journalists in Palestine has been emblematic of these dangers and, to date, and the impunity for such attacks.
26. The three cases of Yaser Murtaja, Ahmad Abu Hussain and Muath Amarneh were widely publicised<sup>17</sup> and caused significant international concern about the deliberate

<sup>13</sup> Ben Saul. ‘[The international protection of journalists in armed conflict and other violent situations.](#)’ (2008) 14(1) *Australian Journal of Human Rights* 99, 99.

<sup>14</sup> United Nations Security Council, Resolution 1738 (2006), S/RES/1738 (23 December 2006) para. 1.

<sup>15</sup> United Nations Security Council, Resolution 1738 (2006), S/RES/1738 (23 December 2006) para. 8.

<sup>16</sup> Ben Saul. ‘[The international protection of journalists in armed conflict and other violent situations.](#)’ (2008) 14(1) *Australian Journal of Human Rights* 99, 133.

<sup>17</sup> See, for e.g. Loveday Morris, ‘He was wearing a vest marked “PRESS”. He was shot dead covering a protest in Gaza.’ *The Washington Post* (7 April 2018) [https://www.washingtonpost.com/world/palestinian-journalist-in-vest-marked-press-shot-dead-by-israeli-troops-in-gaza/2018/04/07/ac57b524-3a30-11e8-8fd2-49fe3c675a89\\_story.html](https://www.washingtonpost.com/world/palestinian-journalist-in-vest-marked-press-shot-dead-by-israeli-troops-in-gaza/2018/04/07/ac57b524-3a30-11e8-8fd2-49fe3c675a89_story.html); Israeli Forces continue to target Journalists despite “Press” marked vests’. *Al Mezan* (8 April 2018) <https://reliefweb.int/report/occupied-palestinian-territory/israeli-forces-continue-target-journalists-despite-press>; Robert Mackey, ‘Seeing Gaza Through the Lens of Yaser Murtaja, a Palestinian Journalist Killed by Israel’ *The Intercept* (9 April 2018) <https://theintercept.com/2018/04/09/gaza-protest-yaser-murtaja-journalist-israel-palestine/?comments=1>; Hannah Mays, ‘Israel “targeted” Palestinian journalist shot dead in Gaza protest.’ *The Times* (9 April 2018) <https://www.thetimes.co.uk/article/israel-deliberately-killed-journalist-in-gaza-protest-chg0z6gp5>; ‘Israeli Occupying forces target journalists covering Gaza protests, killing one and injuring others (12 April 2018) *Al-Haq* <http://www.alhaq.org/monitoring-documentation/6244.html>; ‘Second journalist covering Gaza rally killed by Israeli forces.’ *Al Jazeera* (25 April 2018) <https://www.aljazeera.com/news/2018/04/journalist-covering-gaza-rally-killed->



targeting of journalists covering events in Palestine.<sup>18</sup> For example, the cases of Yaser Murtaja and Ahmad Abu Hussain were highlighted by the independent international commission of inquiry on the protest in the Occupied Palestinian Territory which reported to the Human Rights Council in 2019.<sup>19</sup> In the report, the commission of inquiry concluded that both Yaser and Ahmed were killed while reporting on the protests while wearing blue helmet and a blue vest clearly marked “Press” and “*found reasonable grounds to believe that Israeli snipers shot journalists intentionally, despite seeing that they were clearly marked as such*”.<sup>20</sup> Their cases are high profile and emblematic of the issues facing journalists working in Palestine.

(d) *Length of extension*

27. In terms of the length of the extension of the time limit, the Chamber will consider the reasonableness of the request under the relevant circumstances.<sup>21</sup> In particular, whether the newly proposed time limit appears to be “*not excessive*”;<sup>22</sup> in other words, “*any departure from the time limits set by the Rules or Regulations of the Court must not derail the proceedings from their ordained course, requiring that they be conducted and concluded within a reasonable time.*”<sup>23</sup>
28. The LRV notes that no further procedural deadlines have yet been set in relation to the Situation in the State of Palestine and reiterates that the Court is currently in a period of

[israeli-forces-180425163003132.html](https://www.independent.co.uk/news/world/middle-east/palestinian-journalist-dead-shot-ahmad-abu-hussein-israel-gaza-palestine-a8323216.html); Samuel Osborne. ‘Palestinian journalist shot by Israeli troops at Gaza protest has died two weeks later.’ *Independent* (26 April 2018) <https://www.independent.co.uk/news/world/middle-east/palestinian-journalist-dead-shot-ahmad-abu-hussein-israel-gaza-palestine-a8323216.html>; ‘Palestinian journalist shot during Gaza protests dies of wounds’ *CNN* (26 April 2018) <https://edition.cnn.com/2018/04/26/middleeast/gaza-palestinian-protest-death-intl/index.html>; ‘Palestinian journalist loses eye after being shot by Israeli sniper.’ *Middle East Monitor* (20 November 2019) <https://www.middleeastmonitor.com/20191120-palestinian-journalist-loses-eye-after-being-shot-by-israel-sniper/>

<sup>18</sup> See, for e.g. UNESCO, ‘Director-General Condemns Killing of Press Photographer Yaser Murtaja on the Gaza Border’ (10 April 2018) <https://en.unesco.org/news/director-general-condemns-killing-press-photographer-yaser-murtaja-gaza-border>; UNESCO, ‘Director-General Condemns Killing of Community Radio Journalist Ahmad Abu Hussein in Gaza’ (30 April 2018) <https://en.unesco.org/news/director-general-condemns-killing-community-radio-journalist-ahmad-abu-hussein-gaza>; Jan Egeland, Norwegian Refugee Council, ‘Accountability needed for killing of Gaza civilians’ (9 April 2018) <https://www.nrc.no/news/2018/april/accountability-needed-for-killing-of-gaza-civilians/>

<sup>19</sup> UN Human Rights Council, ‘[Report of the independent international commission of inquiry on the protest in the Occupied Palestinian Territory.](#)’ (A/HRC/40/74) (25 February 2019) and UN Human Rights Council, ‘[Report of the detailed findings of the independent international commission of inquiry on the protest in the Occupied Palestinian Territory.](#)’ (A/HRC/40/CRP.2) (18 March 2019).

<sup>20</sup> UN Human Rights Council, ‘[Report of the independent international commission of inquiry on the protest in the Occupied Palestinian Territory.](#)’ (A/HRC/40/74) (25 February 2019) para. 74.

<sup>21</sup> *Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui*, [Decision on the Prosecution’s Motion to File Partial Table of Incriminating Evidence and Related Material, Confidential – Ex Parte, available to the Prosecution Only](#), No. ICC-01/04-01/07-1095, 4 May 2009, para. 3.

<sup>22</sup> *Prosecutor v Thomas Lubanga Dyilo*, [Decision on the application by Counsel for Mr. Thomas Lubanga Dyilo to extend the time limit for the filing of the response to the Prosecutor’s document in support of the appeal](#), No. ICC-01/04-01/06-190, 11 July 2006, para. 6.

<sup>23</sup> *Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui*, [Reasons for the ‘Decision on the Application for Extension of Time Limits pursuant to Regulation 35 of the Regulations of the Court](#), No. ICC-01/04-01/07-653, 27 June 2008, para. 6.

physical lockdown. This lockdown is expected to run until at least 31 March 2020. While Counsel originally suggested a 14-day extension by email, it is respectfully submitted that a 21-day extension is more appropriate in the current, exceptional circumstances. The LRV submits that an extension of the time limit to 6 April 2010 is both reasonable and does not in any way threaten to “derail”, nor in any way prejudice, the proceedings.

#### IV. CONCLUSION

29. For all the foregoing reasons, the LRV asks that the Chamber grant this Request and allow the LRV until 6 April to file submissions on the question of the Court’s jurisdiction over crimes committed in the territory of Palestine.



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Ms Jennifer Robinson  
Legal Representative of Victims

Dated this 20th day of March 2020  
At London, United Kingdom