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No.: ICC-01/13
Date: 30 January 2015

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Ekaterina Trendafilova
Judge Christine Van den Wyngaert

**SITUATION ON REGISTERED VESSELS OF THE UNION OF THE
COMOROS, THE HELLENIC REPUBLIC OF GREECE AND THE KINGDOM OF
CAMBODIA**

Public

**Prosecution Request concerning its Response to the Government of the Union of
the Comoros' Application under article 53(3)(a) of the Rome Statute, and the
applicable time limit**

Source: Office of the Prosecutor

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

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Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

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**Victims Participation and Reparations Other
Section**

Introduction

1. On 6 November 2014, in a 61-page written report, the Office of the Prosecutor (“Prosecution”) determined that there is no reasonable basis to proceed with an investigation into certain events in 2010 referred to it by the Government of the Union of the Comoros (“GoCo”).¹ The Prosecution made this determination after concluding that any potential case(s) arising from an investigation would not be of sufficient gravity to justify further action by the Court and would therefore be inadmissible pursuant to articles 17(1)(d) and 53(1)(b) of the Rome Statute (“Statute”).²

2. On 29 January 2015, after 84 days, the GoCo filed a 61-page application under article 53(3)(a) of the Statute for review of the Prosecution’s decision.³ This is the first occasion on which such an application has been made before the Court.

3. The Prosecution requests confirmation from Pre-Trial Chamber I that it is entitled to respond to the Application, and of the appropriate time limit for filing such a response. Such a response will assist the Pre-Trial Chamber’s review and is consistent with the principles underlying the statutory mechanism for initiating proceedings before the Court.

Submissions

4. The Prosecution seeks confirmation from Pre-Trial Chamber I of the procedure to be followed in addressing the Application. The Prosecution considers that, under the Statute and the Rules of Procedure and Evidence (“Rules”), it is entitled to respond to the Application. Furthermore, any deadline set for filing such a response should be consonant with the complex subject-matter, the scope and length of the

¹ See ICC, Office of the Prosecutor, *Situation on Registered Vessels of Comoros, Greece, and Cambodia: Article 53(1) Report*, 6 November 2014, available at [http://www.icc-cpi.int/iccdocs/otp/OTP-COM-Article_53\(1\)-Report-06Nov2014Eng.pdf](http://www.icc-cpi.int/iccdocs/otp/OTP-COM-Article_53(1)-Report-06Nov2014Eng.pdf) (accessed 29 January 2015) (“Article 53(1) Report”), para.151.

² See Article 53(1) Report, para.150.

³ ICC-01/13-3-Red (“Application”).

Application, and the principle of equality of arms. To any extent it may be required, the Prosecution seeks the necessary leave of the Pre-Trial Chamber for these purposes.

The Prosecution is entitled to respond to the Application

5. The procedure governing applications under 53(3)(a) of the Statute is set out primarily in rules 107 and 108 of the Rules.

6. Rule 107(2) refers to the Pre-Trial Chamber's discretion to request the Prosecutor to transmit information or documents in its possession to the Pre-Trial Chamber to conduct its review. No express mention is made of the Prosecution's right to file a document in response to an application for such a review. However, regulation 38(1)(d) of the Regulations of the Court ("Regulations") expressly contemplates that the Prosecution may file such a response. It identifies an application under article 53(3)(a) as one of the submissions for which "documents and responses thereto, if any" (emphasis added) shall not exceed 100 pages in length.

7. Affirming that the Prosecution has a right to respond to an application under article 53(3)(a) would furthermore be consistent with regulation 24(1),⁴ as well as the general adversarial practice of this Court (and other international courts and tribunals), and the overriding interest in fair and expeditious proceedings.

8. The GoCo has presented the Pre-Trial Chamber with comprehensive submissions on matters of both fact and law, of equal length to the Article 53(1) Report itself.⁵ Many of its submissions turn upon an interpretation of the Prosecution's reasoning and practice, to which the Prosecution will be able to

⁴ Regulations, regulation 24(1) ("The Prosecutor and the defence may file a response to any document filed by any participant in the case in accordance with the Statute, Rules, these Regulations and any order of the Chamber."). For the purpose of article 53(3)(a) proceedings, the GoCo could be deemed a "participant" before the Court.

⁵ Compare Article 53(1) Report (numbering 61 pages) with Application (numbering 61 pages).

provide relevant insight. The Application also raises matters, such as a new preliminary examination recently opened by the Prosecution, which have arisen since the Article 53(1) Report was publicised.

9. A document in response to the Application will both permit the Prosecution to clarify any areas of agreement and disagreement with the GoCo, and to address the GoCo's concerns in an open and public forum. This accords appropriate weight to the concerns of a State Party regarding potential crimes, and will assist the Pre-Trial Chamber in analysing these matters. Such an approach is also consistent with the drafters' intention in creating the article 53(3)(a) procedure.

10. To any extent that the Pre-Trial Chamber does not agree that the Prosecution may respond to the Application as of right, leave to file such a response is nonetheless requested, for the reasons outlined. Under these circumstances, the Prosecution requests authorisation for its response to be of a length not exceeding 100 pages, consistent with the spirit of regulation 38(1)(d).

The deadline set for the Prosecution's response should be no sooner than 30 March 2015

11. The Statute, Rules, and Regulations do not specify a specific time limit for the Prosecution to file a document in response to an application under article 53(3)(a). If Regulation 34(b), the general rule for the filing of responses, were to apply, the time limit would be 21 days after notification of the Application.

12. However, given the scope and length of the Application, and the nature of the issues therein, the Prosecution submits that any deadline for its document responding to the Application should be set for no sooner than 30 March 2015, *i.e.* 60 days from the Application's notification. The Prosecution invites the Pre-Trial

Chamber to set the deadline accordingly for the Prosecution's response in this case, or to vary any applicable time limit to this date in accordance with regulation 35(1).

13. A 60-day time limit for responding to the Application is appropriate having regard to its length and the complexity of the issues involved. This time frame is also appropriate to allow the Prosecution to give proper consideration to the arguments raised, consistent with its common interest with the GoCo in fulfilling the aspirations and requirements of the Statute.

14. A 60-day time limit is reasonable, having regard to the 90-day time limit set by rule 107(1) for the GoCo to have filed the Application. By analogy with appellate procedure,⁶ it is usual to permit the filing of a response after a time period equal to or at least two-thirds of the time allowed for the appellant.⁷

Relief sought

15. For these reasons, the Prosecution requests Pre-Trial Chamber I to confirm that it is entitled to file a document not exceeding 100 pages in length in response to the Application, or to authorize such a response if necessary, to be filed not earlier than 30 March 2015.



Fatou Bensouda, Prosecutor

Dated this 30th day of January 2015

At The Hague, The Netherlands

⁶ See e.g. Application, para.51 (inviting the Pre-Trial Chamber to consider appellate practice in the standard of review it applies to the Application).

⁷ See e.g. Regulations, regulations 58(1), 59(1), 64(2), (4)-(6).