

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/13**

Date: **24 April 2015**

PRE-TRIAL CHAMBER I

Before: Judge Joyce Alouch, Presiding Judge
Judge Cuno Tarfusser
Judge Péter Kovács

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

Public Document

Application for an Oral Hearing

Source: Sir Geoffrey Nice QC, Rodney Dixon QC, and Stoke & White LLP
(London) on behalf of the Government of the Union of the
Comoros

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

The Office of the Prosecutor
Ms. Fatou Bensouda, Prosecutor

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of the Applicant

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

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

States Representatives
Sir Geoffrey Nice QC
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Victims and Witnesses Unit

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**Victims Participation and Reparations
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Other

I. INTRODUCTION

1. Counsel for the Government of the Union of the Comoros (“the Applicant State Party” or “Applicant”) submit this application for an oral hearing to consider the Application for Review pursuant to Article 53(3)(a) of 29 January 2015.¹
2. The Government of the Comoros respectfully requests the Chamber to schedule an oral hearing before determining the Review Application, taking into account the provisions of Rule 107(4). As a State Party the Comoros urges the Chamber to permit this matter of substantial importance to be argued in court, and in particular for the Government to have an opportunity directly to address any concerns and questions that the Chamber may have, before any final decision is rendered. This is the very first time that a judicial review is being conducted of any decision taken by the Prosecutor, and it deserves the attention and scrutiny of an oral hearing.
3. As emphasised below, the Applicant State Party also asks that the Chamber renders a decision on its Application for Leave to Reply without delay, and before any decision on the merits of the Review Application is rendered, and that the Chamber permits the Comoros to file its submissions in reply which should fairly be taken into account by the Chamber in its deliberations.

II. SUBMISSIONS

4. The Applicant State Party notes that Rule 107(4), which is a provision governing applications pursuant to Article 53(3), provides that:

“When a State ... makes a request referred to in sub-rule 1 [to review the Prosecutor’s decision not to open an investigation], the Pre-Trial Chamber may seek further observations from them.”²

¹ Application for Review pursuant to Article 53(3)(a) of the Prosecutor’s Decision of 6 November 2014 not to initiate an investigation in the Situation, ICC-01/13-3-Red, 29 January 2015 (hereinafter “Request for Review”).

² Rules of Procedure and Evidence, Rule 107(4).

5. The Applicant submits that the Chamber should not make any determination without permitting the parties an opportunity to address in an oral hearing the concerns and questions of the Chamber, particularly in the event that the Chamber is not minded to direct that the Prosecutor reconsider her Decision. Further observations should as necessary be sought from the parties. The issues raised by the very first Review are novel and complex, with no precedents and authorities on point. It is thus vital that all available procedures in the proceedings are used to air and explore the subject matter.
6. It is acknowledged in jurisdictions around the world that judges may change their positions and views once they have tested them with the parties in oral submissions and argument. There is in the Applicant's submission no convincing reason to refuse an oral hearing when it can only assist the Chamber in its deliberations and engender public confidence in the Court's approach to dealing with the present Review that is being widely followed in the Middle East and throughout the world.
7. Furthermore, the Chamber is yet to rule on the Applicant State Party's Application for Leave to Reply of 9 April 2015³. The Prosecution has responded to this Application with detailed arguments⁴. The various issues raised in this Response of 17 April 2015 (in addition to the Prosecution's main response to the Review Application) highlight the very sharp differences between the parties' positions and the extent of the disputes.⁵ Even if the Chamber grants the Applicant's Leave to Reply of 9 April 2015 – as the Applicant submits it clearly should do – the fundamental issues in dispute will need to be confronted in an oral hearing, which can only assist in narrowing and clarifying the questions for determination. In this way, all of the matters raised in the recent filings can be addressed.

³ Application for Leave to Reply to 'Prosecution Response to the Application for Review of its Determination under article 53(1)(b) of the Rome Statute', ICC-01/13-15, 9 April 2015 (hereinafter "Leave to Reply of 9 April 2015").

⁴ Prosecution's Response to the Government of the Union of the Comoros' Application for Leave to Reply in Support of its Application under article 53(3) of the Rome Statute (ICC-01/13-15), ICC-01/13-17, 17 April 2015 (hereinafter "Prosecution Response of 17 April 2015").

⁵ See for example, Comoros' Leave to Reply of 9 April 2015, paras. 4, 22-27; Prosecution Response of 17 April 2015, paras. 20, 21.

8. There is case law that supports convening oral hearings to receive the submissions of States Parties and State representatives. The Pre-Trial Chamber has held that it was appropriate to schedule “*a hearing where [the State] will be given ... the opportunity to complement its previous submission and evidence relevant to its*” Application.⁶ States Parties have also had the opportunity to address the Chamber ‘in person’ in oral hearings.⁷
9. Given that the Comoros has been a State Party since 2006⁸, and is now the first State Party to have a referral to the ICC refused, it is submitted that due respect and deference should be given to its request to appear before the Chamber on this matter of great significance for the country, the victims, and the international community, as well as for the jurisprudence of the ICC.
10. The Government of the Comoros highlights that the present proceedings before the ICC are the final genuine opportunity for the victims to obtain justice for the crimes that they have endured.⁹ It is for this reason that the Applicant State Party has referred the matter to the ICC. The referral should not be dismissed without the State itself having the chance to argue its case in a public oral hearing before the Judges.

⁶ *Prosecutor v. Gaddafi et al.*, Order convening a hearing on Libya's challenge to the admissibility of the case against Saif Al-Islam Gaddafi, ICC-01/11-01/11-207, 14 September 2012, paras. 12, 13.

⁷ See for example, *Prosecutor v. Kenyatta*, Order scheduling a status conference on 13 February 2014, ICC-01/09-02/11-897, 6 February 2014, para. 5.; *Prosecutor v. Kenyatta*, Order vacating trial date of 7 October 2014, convening two status conferences, and addressing other procedural matters, ICC-01/09-02/11-954, 19 September 2014, paras. 11-13.; *Prosecutor v. Kenyatta*, Scheduling order and agenda for status conference on 9 July 2014, ICC-01/09-02/11-929, 4 July 2014, paras. 4-5; *Prosecutor v. Ruto et al.*, Decision on status conference and additional submissions related to ‘Prosecution's request under article 64(6)(b) and article 93 to summon witnesses’, ICC-01/09-01/11-1165, 29 January 2014, para. 5.

⁸ See, The States Parties to the Rome Statute (http://www.icc-cpi.int/en_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx#C).

⁹ It is noted that in the Prosecution's Response of 30 March 2015, the Prosecution states that the “*Prosecution's decision not to initiate an investigation*” does not “*lead to impunity*” because “*Turkish courts have commenced in absentia proceedings concerning these alleged crimes*” and “*Attempts have also been made to initiate proceedings in States party to the Statute, including the United Kingdom (civil and criminal proceedings), the Federal Republic of Germany, and Sweden.*” See, Public Redacted Version of Prosecution Response to the Application for Review of its Determination under article 53(1)(b) of the Rome Statute, ICC-01/13-14-Red, 30 March 2015, para. 4, note 16. However, as the Prosecution is aware, none of these proceedings has resulted in any prosecution of the alleged perpetrators either because of jurisdictional issues, or because the accused have not attended the proceedings.

11. Given that the proposed date for filing the Applicant's Reply of 30 April 2015 is approaching very soon, the Government of the Comoros asks the Chamber urgently to rule on this Application and to grant an oral hearing thereafter.

III. CONCLUSION

12. Accordingly, the Government of the Comoros respectfully requests that an oral hearing is scheduled by the Chamber, and that the Government's Application for Leave to Reply of 9 April 2015 is decided on before and separately from the Chamber's decision on the merits of the Review Application.



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Rodney Dixon QC

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Dated 24 April 2015

London