



Original: **English**

No.: **ICC-01/13**
Date: **8 May 2015**

PRE-TRIAL CHAMBER I

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

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

**Public
With Public Annex A**

**Report on Applications Received from Victims who have Communicated with the
Court pursuant to Decision ICC-01/13-18**

Source: Registry

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
Sir Geoffrey Nice
Mr Rodney Dixon

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**
Ms Paolina Massidda

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar
Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**
Ms Fiona McKay

Other

The Registrar of the International Criminal Court (the “Court”);

NOTING the referral of the Union of Comoros (the “Comoros”) made under article 14 of the Rome Statute dated 14 May 2013 (the “Referral”);¹

NOTING the Presidency Decision notified on 5 July 2013 (the “Presidency Decision”) assigning the Situation on Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia (the “Situation”) to Pre-Trial Chamber I (the “Chamber”);²

NOTING the Chamber’s Decision on the Victims’ Participation in the Situation notified on 24 April 2015 (the “Decision of 24 April 2015”),³ in which the Chamber: 1) instructs the Victims Participation and Reparations Section (the “VPRS”) to conduct an assessment of all applications of victims who have communicated with the Court (the “Applicants”) with a view to ascertaining whether they fall within the scope of the Situation, to verify whether victims are represented by Sir Geoffrey Nice and Mr Rodney Dixon (the “Counsel”), by any other counsel, or whether they are unrepresented, and to submit a report by no later than Friday, 8 May 2015 at 16h00; and 2) appoints Ms Paolina Massidda from the Office of Public Counsel for Victims (the “OPCV”) to be the legal representative of the unrepresented victims for the purposes of the article 53 proceedings;

NOTING articles 53 (3) and 68 (3) of the Rome Statute, and rules 59 and 107(5) of the Rules of Procedure and Evidence (the “Rules”);

¹ ICC-01/13-1-Anx1.

² ICC-01/13-1.

³ ICC-01/13-18.

CONSIDERING that the Referral involving the Gaza Flotilla incident defines the scope of the Situation and encompasses war crimes and crimes against humanity allegedly committed from 31 May 2010 to 6 June 2010 and onwards on registered State vessels from the Union of Comoros, Greece and Cambodia (“the Scope of the Situation”);⁴

CONSIDERING that as of today the VPRS has received a total of 469 applications to participate in the proceedings and/or applications for reparations related to the Situation;⁵

CONSIDERING that of these 469 applications, the VPRS has assessed 418 to be falling within the Scope of the Situation and 51 to fall outside the Scope of the Situation, in light of Rule 85 requirements;

TRANSMITS to the Chamber the present report (the “Report”);

RESPECTFULLY SUBMITS AS FOLLOWS:

Explanation of the VPRS Rule 85 Assessment:

1. When performing its review of the applications, the VPRS followed the case law of the Court,⁶ and verified to the extent possible that the following elements were met, *prima facie*:
 - (i) The applicant established his or her identity as a natural person. In the case where the applicant is an organisation or an institution, it has provided : a) a document constituting it in accordance with the law of the relevant country, and b) a document proving that the person

⁴ ICC-01/13-18, para. 12..

⁵ This figure might include duplicates. However the VPRS was not yet able to proceed to a comprehensive check.

⁶ See, *inter alia*, ICC-02/04-01/15-205, paras. 1718.

submitting the application on behalf of that organisation or institution has the right to make such a request;⁷

- (ii) The applicant has suffered personal harm. In the case where the applicant is an organisation or an institution, the harm suffered must be direct and to any of their property dedicated to purposes included in Rule 85 (b);
- (iii) The event(s) described in the application constitute(s) one or more crimes within the jurisdiction of the Court;
- (iv) The harm suffered is a result of the alleged crimes which occurred on the vessels registered to the Comoros, the Hellenic Republic and the Kingdom of Cambodia (the “Three Vessels”) within the factual parameters of the Referral.⁸

2. In undertaking its assessment of information provided by the Applicants, the VPRS included a consideration of whether Applicants could be considered either direct or indirect victims.^[1] This included considering whether Applicants who were not on board any the Three Vessels could be considered indirect victims on the basis that they allege in their application that they suffered personal harm as a result of crimes committed on the Three Vessels. The VPRS has not been able to assess any applicants as clearly falling within this category in the absence of specific information being presented. However the VPRS would like to draw to the Chamber’s attention two issues that have arisen in this regard.

⁷ See, *inter alia* ICC-01/04-01/06-1119, para. 89; ICC-01/05-01/08-320, para. 53.

⁸ In instances where an Applicant does not clearly indicate whether the personal harm suffered is the result of the alleged crimes which occurred on the Three Vessels, the VPRS took into account any corroborating information in this regard, such as information available in other applications, or the report of the international fact-finding mission established by the Human Rights Council, A/HRC/15/21.

^[1] In accordance with the Court’s jurisprudence, harm suffered by one victim as a result of the commission of a crime within the jurisdiction of the Court can give rise to harm suffered by other victims. See, *inter alia*, ICC-01/04-01/06-1432, para. 32; ICC-01/04-01/06-3129-AnxA, para. 6.

3. First, a number of Applicants who were on other boats in the Flotilla indicate in their applications that they were affected by the events on the three vessels, though without providing very specific information relating to harm suffered as a result.
4. Second, the Registry received a communication from a lawyer representing an association of fishers of Gaza and 448 Palestinian victims wishing to participate in the proceedings related to the Situation.⁹ The lawyer contends that the 31 May 2010 attack is “linked to the Gaza blockade and that the two events are inseparable since the attack of the vessels would not have occurred if the blockade did not exist”. He further asserts that his alleged clients claim to have suffered harm as a result of the 31 May 2010 attack since, if the humanitarian material transported by the vessels had been delivered to them, this “would have broken the blockade” and consequently “would have changed their lives”. The related individual applications for participation in the proceedings have not yet been received.¹⁰
5. The Registry leaves it to the Chamber to consider whether it wishes the VPRS to follow up further. The Registry notes that at this point, the information received to date is not sufficient in any event to determine whether or not any persons could be considered (indirect) victims under Rule 85. The VPRS would be able to provide the Chamber with further details and documentation in relation to both of the above issues, and/or request further information from any of these persons, should the Chamber so wish.
6. The VPRS would like to draw to the Chamber’s attention the fact that while the applications received were mostly completed in either English or French, many included supporting documents in Turkish, which is not a working language of the Court. Since in the time available it was not possible to obtain

⁹ Letter addressed by the lawyer to the Registrar, dated 30 March 2015.

¹⁰ The VPRS contacted the lawyer who confirmed that he has in his possession powers of attorney from each person but no documents yet containing the information required to be considered an application for participation in the proceedings.

full translations of the documents provided, the VPRS was not in a position to systematically review all documents of this type. In a minority of cases where it was not possible to ascertain the content of documents presented, the VPRS could only base its assessment on documents provided in either English or French.¹¹

7. A large number of applications were incomplete. The VPRS sent 45 follow up requests for supplementary information to Applicants and was able as a result to complete three applications. The VPRS notes however that many applicants were not in a position to provide the necessary documentation to complete their applications before the 8 May 2015 deadline. Since the VPRS only started sending requests for supplementary information after a thorough analysis of each application with its attachments following the Decision of 24 April 2015, many applicants received a request for additional information to supplement their application only at short notice, and have responded that they would be able to provide the required documents only if they are given more time to do so. In light of the above, and in light of the stage of the proceedings, the VPRS applied a flexible approach in assessing the Rule 85 criteria in relation to the victims who have communicated with the Court.

Overview of the assessment of the applications received:

8. The VPRS provides in annex A to the Report a list of the 469 applications received subdivided into groups according to which vessel the applicant alleges to have been aboard, and whether the applications have been assessed as complete or incomplete.
9. Of all applications assessed to date, 418 fulfil the requirements set by the Chamber and have been assessed as falling within the territorial, temporal

¹¹ The VPRS made its best efforts to ascertain the content of documents presented in Turkish with the internal capacity available in the Registry, but at this stage was not able to review all such documents within the time available.

and subject matter jurisdiction of the Situation. Of the 418 applications, 407 refer to crimes committed on board of Mavi Marmara, a vessel registered under the flag of the Union of the Comoros; two applications pertain to crimes committed on board the Rachel Corrie, a vessel registered under the flag of the Kingdom of Cambodia; and nine applications refer to crimes committed on board the Eleftheri Mesogios/Sofia, a vessel registered under the flag of the Hellenic Republic of Greece.

51 applications have been assessed as falling outside the Scope of the Situation, in light of the requirements of rule 85 of the Rules

Legal representation of the Applicants:

10. Some Applicants have indicated in their application for participation and/or reparations that they have a legal representative.
11. Some have provided powers of attorney designating a Counsel who is on the Registry List of Counsel; and the Counsel informed the VPRS that that it will shortly receive the powers of attorney of further Applicants also represented by them.
12. The Registry notes that some Applicants designate legal representatives who are not on the List of Counsel created and maintained by the Registrar in accordance with Rule 21(2). The VPRS has invited these legal representatives to submit relevant documentation to the Registry to be registered on the List, and has informed them that should they not be registered, the Applicants who designated them would otherwise be considered as unrepresented pursuant to the Decision of 24 April 2015.
13. In accordance with the Decision of 24 April 2015, the VPRS will consider the Applicants who have not provided powers of attorney as unrepresented, and

will transmit their applications to the Office of Public Counsel for Victims as their legal representative for the purposes of the article 53 proceedings.¹²



Marc Dubuisson, Director, Division of Court Services

per delegation of Herman von Hebel, Registrar

Dated this 8 May 2015

At The Hague, The Netherlands

¹² A large number of applicants indicate in their application form that they do not wish to have assistance from the Court to find a lawyer, and/or do not wish to be represented by the Court's lawyers in the meantime. However they did not exclude the possibility of being represented at all.