

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: ICC-01/13
Date: **15 July 2015**

PRE-TRIAL CHAMBER I

Before: Judge Joyce Aluoch, 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

**Prosecution's Procedural Clarification concerning New Information presented by
the Government of the Union of the Comoros (ICC-01/13-30)**

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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Mr Geoffrey Nice
Mr Rodney Dixon
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Unrepresented Victims

**Unrepresented Applicants for
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Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section Other**

1. The Pre-Trial Chamber is seised of the Government of the Union of the Comoros' request to review the Prosecutor's determination of 6 November 2014.¹
2. In a response to the observations of the victims' representatives,² the Comoros now presents, through Counsel, a statement signed on 9 July 2015.³ This statement pertains to events on 29 June 2015, more than seven months after the publication of the Report.
3. Although the Prosecution makes no comment on the merit of the Comoros' recent submissions,⁴ it brings to the Pre-Trial Chamber's attention its understanding that these proceedings under article 53(3) of the Rome Statute must be based on "the information available to the Prosecution at the time it completed the Report."⁵ Information pertaining to subsequent events cannot show any error in the Report, which was based on the information available at the time of publication.
4. Rather, the Report expressly noted that new facts or information relevant to the decision not to initiate an investigation in this situation may be considered by the

¹ See ICC-01/13-3-Red ("Request"); ICC-01/13-6-AnxA ("Report").

² See ICC-01/13-27-Red (observations by the Office of Public Counsel for Victims, or "OPCV Observations"); ICC-01/13-28-Red (observations by Mr Nice and Mr Dixon for certain victims).

³ ICC-01/13-30 ("Comoros' Response to Victims", submitted by Mr Nice and Mr Dixon for the Comoros, annexing a statement).

⁴ The Prosecution notes that no replies have been authorised in these proceedings to date, and therefore does not consider it appropriate to address any matter of substance without authorisation. It also considers such an approach applicable in principle to any extent the Comoros' Response to Victims addresses matters not raised by the victims.

⁵ ICC-01/13-29-Red ("Prosecution Response to Victims"), para.17. See also OPCV Observations, para.24. See further, by analogy, ICC-01/11-01/11-565 OA6, para.58 (in the context of an appeal against a decision on admissibility, declining to consider documents which had not been considered by the Pre-Trial Chamber, some of which post-dated the impugned decision, and disregarding related submissions). See also ICC-01/11-01/11-547-Red OA4, paras.41-44 (reaching a similar conclusion, and recalling jurisprudence noting *inter alia* that "the admissibility of a case must be determined on the basis of the facts as they exist at the time of the proceedings concerning the admissibility challenge").

Prosecution under the separate procedure of article 53(4).⁶ This is distinct, however, from these proceedings under article 53(3).⁷



Fatou Bensouda, Prosecutor

Dated this 15th day of July 2015

At The Hague, The Netherlands

⁶ Report, para.151.

⁷ In this context, the Prosecution recalls its previous observation that communications may properly be presented to the Court outside the framework of these article 53(3) review proceedings, under article 15 of the Statute: *see* Prosecution Response to Victims, paras.128, 135, 151, 155.