

## PARTLY DISSENTING OPINION OF JUDGE PÉTER KOVÁCS

1. I concur with my colleagues on most of the procedural decisions undertaken, namely to reject the 15 March 2018 Application of the Government of the Union of the Comoros (GoC) and the 11 April 2018 GoC Request as moot.<sup>1</sup> I also agree with the Majority to dismiss *in limine* the “23 February 2018 Application” with respect to the Prosecutor’s reconsideration pursuant to article 53(4) of the Statute.<sup>2</sup> However, I cannot follow the Majority in granting the “23 February 2018 Application in so far as it is based on article 53(3)(a) of the Statute”,<sup>3</sup> or finding that the “29 November 2017 Decision” is not final within the meaning of rule 108(3) of the Rules.<sup>4</sup> This certainly leads to the inevitable conclusion that I also cannot agree with the Majority’s conclusion requesting the Prosecutor to reconsider anew the 6 November 2014 Decision and “notify this Chamber [...] of her final decision [...]”.<sup>5</sup> To put it differently, it is my strong belief that the 23 February 2018 GoC Application must be dismissed *in limine* in so far as it relates to a new reconsideration of the Prosecutor’s 6 November 2014 Decision for the reasons set out below.

2. Before providing these reasons, I would like to voice a main concern regarding the Prosecutor’s reaction towards the 16 July 2015 Decision, as this would be essential for future review processes carried out by Pre-Trial Chambers under article 53(3) of the Statute.

3. In the 29 November 2017 Final Decision, the Prosecutor reveals dissatisfaction with the 16 July 2015 Decision in terms of the Majority’s assessment of law and facts. I do not want to delve here into the details of the Prosecutor’s arguments. Nevertheless, suffice to mention that the tone used by the Prosecutor in reaction to

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<sup>1</sup> See in this opinion, paras 33-34, 36-37 *infra*; and Majority Decision, p. 44.

<sup>2</sup> Majority Decision, p. 45.

<sup>3</sup> Majority Decision, p. 45.

<sup>4</sup> Majority Decision, p. 45.

<sup>5</sup> Majority Decision, p. 45.

the 16 July 2015 Decision is inappropriate.<sup>6</sup> Regardless of the validity of the Prosecutor's arguments, judicial decisions should be, as a matter of principle, complied with. In case of disagreement, as in the present case, the Statute prescribes the appropriate procedural route to be followed, namely through appeals proceedings, which encompass article 82(1)(d) of the Statute.

4. This principle position does not however change my overall view that the 23 February 2018 GoC Application must be dismissed *in limine* for lack of jurisdiction. I have carefully considered the lengthy submissions received from parties and participants in these proceedings and will refrain from reflecting their content for the sake of judicial economy. In particular, I considered the 23 February 2018 GoC Application together with the annexes appended thereto. I also examined the 29 November 2017 Final Decision together with public annexes A-C, E-G and confidential annex D appended to it, as well as the 13 March 2018 Prosecutor's Response to the 23 February 2018 GoC Application. I also took careful note of the OPCV Response/Victims' Response and having considered this material I have decided the following.

5. In the 23 February 2018 Application, the GoC identified at least four main errors in what it qualifies as two main decisions emanating from the Prosecutor's 29 November 2017 Final Decision.

6. The GoC developed the entirety of its submission on the basis of these alleged errors. According to the GoC, the Prosecutor erred in: 1. "[...] arguing as its first position that [it] is not required to address the errors the Chambers found committed in the [6 November 2014 Decision] [...]"; 2. "[...] misapplying the 'reasonable basis' standard in respect of the factors under Article 17(1)(d) relevant to the gravity

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<sup>6</sup> However, I still consider that the Prosecutor's reconsideration process was inspired by the pronouncement made by the Appeals Chamber. See, Appeals Chamber, [Decision on the admissibility of the Prosecutor's appeal against the "Decision on the request of the Union of the Comoros to review the Prosecutor's decision not to initiate an investigation"](#), 6 November 2015, ICC-01/13-51; see also para. 22 *infra*.

assessment [...]”; 3. “[...] the [29 November 2017 Final Decision] as she failed to apply her mind to, and address, the errors identified by the Chamber, and indeed committed the same errors again and new errors [...]”; and 4. “[...] its Decision on New Evidence [emanating from the 29 November 2017 Final Decision] in failing to take into account or give any weight to the new evidence which concerned the particular factors relevant to the gravity assessment pursuant to Articles 17(1)(d) and 53(1); the Prosecutor misapplied the law, and acted irrationally and unreasonably in the determination of gravity [...]”.<sup>7</sup> The GoC further argued under this last point that “[o]n any reasonable view, there is significant body of new evidence consistent with heightened gravity (including two independent expert reports) [...] which any reasonable prosecutor would regard as showing a reasonable basis to investigate further [...]”.<sup>8</sup>

7. Having set out its errors and developed them throughout its 23 February 2018 Application, the GoC “requests the Pre-Trial Chamber to review the two new OTP Decisions [emanating from the 29 November 2017 Final Decision] not to open an investigation and to direct the Prosecutor to reconsider her Decisions in light of the discernable errors in each of them”.<sup>9</sup>

8. In this respect, I strongly believe that the GoC’s alleged errors put forward in the 23 February 2018 Application mainly pertain to the merits. Thus, the question which the Chamber is called upon to answer is not whether the Prosecutor interpreted the reasonable basis standard correctly or to what extent she did so. Neither is the question whether the Prosecutor gave sufficient weight to the additional evidence submitted by the GoC and the victims in reconsidering the 6 November 2014 Decision or in taking her decision on the new evidence submitted as part of the 29 November 2017 Final Decision.

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<sup>7</sup> ICC-01/13-58-Red, para. 5.

<sup>8</sup> ICC-01/13-58-Red, para. 5.

<sup>9</sup> ICC-01/13-58-Red, para. 132.

9. Rather, the core of the present exercise revolves around whether the Chamber is *entitled* to conduct another review of the 29 November 2017 Final Decision, whether one considers it to be one decision or two decisions, as the GoC suggests. In other words, regardless of the eventual correctness of the arguments put forward by the GoC in its 23 February 2018 Application, the Chamber's role at this stage is first to decide whether or not these two decisions emanating from the 29 November 2017 Final Decision are subject to judicial review under article 53(3)(a) of the Statute and the rules related thereto.

10. If the answer is in the affirmative then the Chamber may delve into the merits in order to identify any potential errors on the part of the Prosecutor as the GoC indicates. However, if the answer is in the negative – as I believe in the case *sub judice* – then the Chamber should not engage with the merits of the 29 November 2017 Final Decision. Instead, the Chamber should accept the Prosecutor's decision as final, ending the entire review process. It is for this latter reason that I do not follow my colleagues in assessing the reconsideration process conducted by the Prosecutor, as this exercise disregards the nature of the 29 November 2017 Decision, being a final one. Such radical position on the part of the Majority does not only lead to an unwarranted new reconsideration process of the 6 November 2014 Decision, but might also open the door for endless reconsideration requests, even in relation to different situations before the Court. Thus, in the following paragraphs, I will set out my overall line of reasoning for deviating from the Majority's approach.

11. According to article 53(1) of the Statute, the "Prosecutor shall, having evaluated the information made available to him or her, initiate an investigation unless he or she determines that there is no reasonable basis to proceed under this Statute. In deciding whether to initiate an investigation, the Prosecutor shall consider whether: [...] (b) The case is or would be admissible under article 17; [...]". Rules 105 and 106 of the Rules come into play and regulate, *inter alia*, the process of notification of a

decision not to initiate an investigation or prosecution under article 53(1) or (2) of the Statute.

12. If the Prosecutor decided not to initiate an investigation or prosecution pursuant to article 53(1) or (2) of the Statute, this negative decision could be subject to judicial review depending on the core ground(s) for such rejection. In case the negative decision was taken on the basis of one or more of the criteria set out in articles 53(1)(a) and/or (b), 53(2)(a) and/or (b) of the Statute, judicial review is only permitted upon request by the referring State or the Security Council, depending on the circumstances underlying the referral. Alternatively, if the negative decision was taken only on the basis of the interests of justice criterion under article 53(1)(c) or 53(2)(c) of the Statute, there is no need for a request by the referring State or the Security Council as the Chamber is empowered to review on its own motion the Prosecutor's decision. The Prosecutor's decision does not become effective unless confirmed by the Chamber.

13. Thus, the drafters of the Statute clearly adopted two distinct regimes governing judicial review of the Prosecutor's negative decisions. The drafters left less margin of discretion to the Prosecutor in case of taking negative decisions under the interests of justice, a concept which is not defined in the Statute and involves a high degree of subjectivity in its assessment. This is the reason for the drafters to provide Pre-Trial Chambers with the automatic power to review this type of decisions and prevent their legal effects until confirmed by the relevant chamber. By the same token, one may clearly observe that any other negative decision taken by the Prosecutor (such as the one related to the 23 February 2018 Application *sub judice*) under the remaining different criteria set out in article 53(1) or (2) of the Statute does not require any confirmation from the relevant chamber before providing its legal effects. This suggests that the drafters intended to preserve a wider degree of

discretion for the Prosecutor at least with respect to negative decisions adopted outside the framework of the interests of justice.<sup>10</sup>

14. With respect to the decision(s) directly related to the 23 February 2018 Application *sub judice*, it is clear that they fall within the latter category and thus a considerable margin of deference should be borne in mind when considering the Prosecutor's negative decision not to initiate an investigation.<sup>11</sup> This conclusion finds further support in the remaining provisions governing judicial review and reconsideration of the Prosecutor's negative decisions adopted within the scope of article 53(1)(a) and/or (b) of the Statute.

15. According to article 53(3)(a) of the Statute, second sentence, the "[P]re-Trial Chamber may review a decision of the Prosecutor under paragraph 1 or 2 not to proceed and may request the Prosecutor to reconsider that decision". Such review is further regulated by rules 107 and 108 of the Rules. If the Chamber decides that the Prosecutor's decision not to initiate an investigation requires review in whole or in part, the "Prosecutor shall reconsider that decision as soon as possible", as rule 108(2) of the Rules dictates. This is actually what the Prosecutor has done by revisiting the 6 November 2014 Decision and issuing her 29 November 2017 Final Decision.

16. Nevertheless, being mandated to reconsider the 6 November 2014 Decision does not mean *per se* that the Prosecutor is obliged to reach a different conclusion than the one she initially reached. As the Appeals Chamber made it clear: the

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<sup>10</sup> In the same vein, Appeals Chamber, [Decision on the admissibility of the Prosecutor's appeal against the "Decision on the request of the Union of the Comoros to review the Prosecutor's decision not to initiate an investigation"](#), 6 November 2015, ICC-01/13-51, para. 59 ("In the Appeals Chamber's assessment, the distinction between the powers of the Pre-Trial Chamber under article 53(3)(a) and (b) reflects a conscious decision on the part of the drafters to preserve a higher degree of prosecutorial discretion regarding decisions not to investigate based on the considerations set out in article 53(1)(a) and (b) of the Statute").

<sup>11</sup> Appeals Chamber, [Decision on the admissibility of the Prosecutor's appeal against the "Decision on the request of the Union of the Comoros to review the Prosecutor's decision not to initiate an investigation"](#), 6 November 2015, ICC-01/13-51, para. 59.

“[16 July 2015 Decision] is a request to the Prosecutor to reconsider her decision not to initiate an investigation – and, [...] the ultimate decision *as to whether to do so is for her*” (emphasis added).<sup>12</sup>

17. The Prosecutor is only obliged – after having reconsidered her decision – to notify the Chamber as well as “those who participated in the review” of her “conclusion” and the “reasons for [such] conclusion”.<sup>13</sup> The requirement revolves around a *mere notification* of the result and the reasons in support, in order to put the Chamber and the parties on notice.<sup>14</sup> It does not subject the Prosecutor’s findings to a *de novo* judicial review as her decision is “final”, as explained below.

18. According to the material submitted to the Chamber, I believe that the Prosecutor has complied with this procedure. Beyond that, neither the Statute nor the Rules or the Regulations impose on the Prosecutor a certain path in conducting her review or reconsideration. In the absence of any explicit legal provision which dictates the Prosecutor a particular manner in which to conduct her review, the Prosecutor is left with a considerable margin of discretion to reconsider the 6 November 2014 Decision,<sup>15</sup> in view of the available material at the time.<sup>16</sup>

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<sup>12</sup> Appeals Chamber, [Decision on the admissibility of the Prosecutor’s appeal against the “Decision on the request of the Union of the Comoros to review the Prosecutor’s decision not to initiate an investigation”](#), 6 November 2015, ICC-01/13-51, para. 50.

<sup>13</sup> Rule 108(3) of the Rules; H. Friman, “Investigation and Prosecution”, in R. S. Lee et al. (eds.), *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence* (Ardley: Transnational Publishers, 2001), p. 501.

<sup>14</sup> Similarly, see W. A. Schabas, *The International Criminal Court: A Commentary on the Rome Statute*, 2<sup>nd</sup> edn. (Oxford: Oxford University Press, 2016), p. 842 (noting that “[i]f the Prosecutor stands by the original decision, there would seem to be no further recourse. The Rules of Procedure and Evidence require only that the Prosecutor notify the Pre-trial Chamber in writing of the decision, which is then communicated to all who have participated in the review” (emphasis added)).

<sup>15</sup> Appeals Chamber, [Decision on the admissibility of the Prosecutor’s appeal against the “Decision on the request of the Union of the Comoros to review the Prosecutor’s decision not to initiate an investigation”](#), 6 November 2015, ICC-01/13-51, para. 59 (“Indeed, under article 53(3)(a) of the Statute, the Prosecutor is obliged to reconsider her decision not to investigate, *but retains ultimate discretion over how to proceed*” (emphasis added)).

<sup>16</sup> In the same vein, M. Bergsmo, P. Kruger, O. Bekou, “Article 53: Initiation of an Investigation”, in O. Triffterer, K. Ambos (eds.), *The Rome Statute of the International Criminal Court: A Commentary*, 3<sup>rd</sup> edn. (C. H. Beck / Hart / Nomos, 2016), p. 1378 (“The only action that the Pre-Trial Chamber may

19. Once the Prosecutor has reached her conclusion as demonstrated by the material available before the Chamber, the decision of the Prosecutor becomes “final”. This is clear from the language provided in rule 108(3) of the Rules, which reads, in the relevant part: “[o]nce the Prosecutor has taken a *final decision*” (emphasis added). The inclusion of the word “final” in rule 108(3) of the Rules is not arbitrary. It means that the decision becomes final. It is the “court’s last action that settles the rights of the parties and disposes of all issues in controversy”.<sup>17</sup> Accordingly, finality “precludes any further action”, namely a further review or reconsideration. Otherwise the core idea underlying finality becomes superfluous and such decisions lose their legal certainty.

20. This conclusion finds further support in the wording of the Appeals Chamber when it stated that “[...] in the event that, upon review, the Pre-Trial Chamber disagrees with the findings or conclusions of the Prosecutor, it may request reconsideration of that decision. Rule 108(3) of the Rules of Procedure and Evidence then provides that the ‘final decision’ is for the Prosecutor” (emphasis added).<sup>18</sup> Citing one commentator in support of its conclusion,<sup>19</sup> the Appeals Chamber adheres to the view that “if, after reconsidering the issue, the Prosecutor *still* decides not to investigate or prosecute, that is the end of the matter [...]”.<sup>20</sup>

21. Thus, a decision taken by the Prosecutor within the confines of article 53(1)(a) or/and (b) of the Statute and rules 105-107 of the Rules cannot be reconsidered twice

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take, ‘if it concludes that the validity of the decision is materially affected by an error, whether it is an error of procedure, an error of law, or an error of fact’, is to request the Prosecutor to reconsider the decision [...] [The Pre-Trial Chamber] cannot replace the Prosecutor’s decision, as the very principle of prosecutorial independence enshrined in the Statute would be at stake”).

<sup>17</sup> Black’s Law Dictionary, 7<sup>th</sup> edn., Bryan A. Garner (ed.), (West Group, 1999), p. 847.

<sup>18</sup> Appeals Chamber, [Decision on the admissibility of the Prosecutor’s appeal against the “Decision on the request of the Union of the Comoros to review the Prosecutor’s decision not to initiate an investigation”](#), 6 November 2015, ICC-01/13-51, para. 56.

<sup>19</sup> H. Brady, “Appeal and Revision”, in R. S. Lee et al. (eds.), *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence* (Ardsey: Transnational Publishers, 2001), p. 579.

<sup>20</sup> Appeals Chamber, [Decision on the admissibility of the Prosecutor’s appeal against the “Decision on the request of the Union of the Comoros to review the Prosecutor’s decision not to initiate an investigation”](#), 6 November 2015, ICC-01/13-51, para. 56, fn. 131.



in accordance with article 53(3)(a) of the Statute and rule 108(3) of the Rules.<sup>21</sup> It follows that the first part of the GoC's request to reconsider the 29 November 2017 Final Decision related to the 6 November 2014 Decision must be dismissed *in limine* for the Applicant's lack of *locus standi* to submit the 23 February 2018 Application and also the lack of jurisdiction on the part of the Chamber to conduct such review. This conclusion stands despite the Majority's argument that the 29 November 2017 Decision is not a "final decision" within the meaning of rule 108(3) of the Rules,<sup>22</sup> "until the Prosecutor has complied with the 16 July 2015 Decision".<sup>23</sup>

22. In this respect, I do not share the approach through which the Majority arrives at its conclusion on this decisive element. I still consider that the Prosecutor has complied and carried out her reconsideration mandate, being guided by the relevant findings of the Appeals Chamber, which provide a wide margin of discretion in conducting such review.<sup>24</sup> Such discretion, in my opinion, is not limited to the mere result, but rather to the entirety of the reconsideration exercise. The fact that the Appeals Chamber pronounced itself on these matters in *obiter dicta* or in the context of ruling on the admissibility of the appeal does not mean *per se* that the Prosecutor cannot be guided by these findings in conducting her reconsideration. To the contrary, these findings of the Appeals Chamber are equally valid, and assist the

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<sup>21</sup> In the same vein, M. Bergsmo et al., "Article 53: Initiation of an Investigation", in O. Triffterer, K. Ambos (eds.), *The Rome Statute of the International Criminal Court*, 3<sup>rd</sup> edn., (C. H. Beck: 2016), p. 1378 (noting that "[i]n reconsidering the decision, the Prosecutor would be guided by the same considerations contained in paragraphs 1 or 2 of article 53. The decision arrived at would then be delivered pursuant to a paragraph 3 review. This would mean that it could not be said that the decision upon reconsideration *was a decision under paragraphs 1 or 2*. As such, neither the Security Council nor the *referring State(s) Party would be entitled to request a further review*" (emphasis added)).

<sup>22</sup> Majority Decision, para. 114.

<sup>23</sup> Majority Decision, para. 114.

<sup>24</sup> See paras 14, 16, 18 and 20 of this opinion. See also Appeals Chamber, [Decision on the admissibility of the Prosecutor's appeal against the "Decision on the request of the Union of the Comoros to review the Prosecutor's decision not to initiate an investigation"](#), 6 November 2015, ICC-01/13-51, paras 50, 56 and 59.

Prosecutor in knowing her parameters in conducting the reconsideration process, by retaining “ultimate discretion over how to proceed”.<sup>25</sup>

23. Turning to the second part of the GoC’s request to reconsider the 29 November 2017 Final Decision in relation to the additional facts submitted to the Prosecutor, the GoC asserts that the Prosecutor has taken a second independent decision on the basis of new evidence. According to the GoC, this is a separate decision from the one the Prosecutor was called upon to reconsider (i.e. the 6 November 2014 Decision) and therefore, this second decision taken on the basis of the additional evidence is subject to reconsideration under article 53(3)(a) of the Statute and the rules related thereto.

24. Here, I would like to point out that the Prosecutor’s consideration of new facts or additional evidence in one and the same decision in two different sections does not change the nature of the review required under the 16 July 2015 Decision. This is a reconsideration of the 6 November 2014 Decision in light of the existing information available at the time of the decision. And as I mentioned earlier in this opinion, this decision is not subject to further review under article 53(3)(a) of the Statute and rule 108(3) of the Rules. To say otherwise would mean that the Prosecutor’s decision would be subject to an indefinite number of reviews, which is an absurd conclusion.

25. If the Prosecutor considered new facts or additional evidence submitted by the GoC and victims, as the material before the Chamber suggests, then it should be a separate and independent decision taken within the scope of article 53(4) of the Statute. The Prosecutor seems to have conflated both decisions in one document, namely the 29 November 2017 Final Decision. The Prosecutor should have avoided

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<sup>25</sup> Appeals Chamber, [Decision on the admissibility of the Prosecutor’s appeal against the “Decision on the request of the Union of the Comoros to review the Prosecutor’s decision not to initiate an investigation”](#), 6 November 2015, ICC-01/13-51, para. 59.

this confusion and the GoC is correct in pointing out these two separate decisions. On this point, I stand to agree with the Majority.<sup>26</sup>

26. Nevertheless, assuming *arguendo* that the Chamber considers the separate section devoted to the assessment of new facts and additional evidence as an independent decision taken within the confines of article 53(4) of the Statute – which is apparently the case, as the material submitted to the Chamber suggests – it is necessary to consider the scope and nature of this provision in order to respond to the second part of the GoC's request.

27. Article 53(4) of the Statute reads: "The Prosecutor may, at any time, reconsider a decision whether to initiate an investigation or prosecution based on new facts or information".

28. The reference to the phrase "at any time" in the first sentence of article 53(4) of the Statute, followed by the clause "reconsider a decision whether to initiate an investigation or prosecution based on new facts or information", makes it clear that the article 53(4) route is an independent path for reconsidering the Prosecutor's decisions and is not regulated by the same set of provisions governing the 6 November 2014 Decision. It is a review which depends first and foremost on the sole authority of the Prosecutor based on her discretion and depending on the availability of new facts and information at any stage of the proceedings up until prosecution. This is the inference to be drawn from the phrase "at any time", the Prosecutor *may reconsider*.

29. Neither the Statute nor the Rules speak of reconsideration of a decision taken by the Prosecutor under article 53(4) of the Statute. This is a clear indication that the drafters of the Statute and the Rules intended to respect the Prosecutor's discretion in carrying out her mandate under this provision. In other words, decisions taken

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<sup>26</sup> Majority Decision, para. 51.

under article 53(4) of the Statute are not subject to judicial review within the meaning of article 53(3)(a) of the Statute. On this last point, I believe that my opinion is not identical to that of the Majority.<sup>27</sup>

30. In conclusion, article 53(4) is an autonomous regime which stresses on the Prosecutor's discretion. Thus, article 53(4) decisions fall outside the scope of review of article 53(3)(a) of the Statute. Only the initial decision taken by the Prosecutor under article 53(1) or (2) of the Statute could be subject to review under article 53(3)(a) if requested by the relevant State or Security Council within the framework specified in rules 105-107 of the Rules. This does not, however, mean that the Prosecutor has an unfettered right to abuse her discretion.

31. To the contrary, the margin of discretion provided to the Prosecutor under such provision(s) puts a higher burden of responsibility on her to act in good faith in carrying out the article 53(4) process. In view of the foregoing, I concur with the Majority in dismissing *in limine* the second part of the GoC request for reconsideration of the Prosecutor's decision taken under article 53(4) of the Statute as reflected in the 29 November 2017 Final Decision.

32. Finally, with respect to the procedural requests put forward by both the GoC and the Prosecutor, I shall respond to each in turn.

33. In relation to the 15 March 2018 GoC Application, the GoC requests:

- (i) that the Pre-Trial Chamber [...] maintain[s] its schedule as set by its Decision of 2 March 2018 that the parties should file their full submissions on jurisdiction and the merits by 3 April 2018;
- (ii) alternatively, if the Chamber is minded to grant the OTP's request to consider its challenge to jurisdiction *in limine*, at the very least a schedule is set by the Chamber to permit the Comoros to respond to the OTP's *in limine* application and submissions by 3 April 2018 when the participating victims have to file.<sup>28</sup>

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<sup>27</sup> See, Majority Decision, paras 53-54.

<sup>28</sup> ICC-01/13-62, para. 2.

34. With respect to the first part of the request, I consider that since the Chamber has already maintained the schedule and content provided in the 2 March 2018 Decision, the first part of the GoC's request becomes moot.

35. Turning to the second, alternative part of the request, since my view is that the 23 February 2018 Application should be dismissed *in limine* for lack of the Applicant's *locus standi* and lack of jurisdiction on the part of the Chamber to entertain a further review, this part of the request becomes moot. In any event, I am of the view that further submissions were not needed for the Chamber's determination on the 23 February 2018 Application. Accordingly, this part of the request must be rejected.

36. On 11 April 2018, the GoC filed a similar submission and "request[ed] the Pre-Trial Chamber to rule on its [15 March 2018 Application] [...] and to provide a scheduling order that [...] permits the Comoros to respond to the [13 March 2018 Prosecutor's Response]".<sup>29</sup>

37. Since the Chamber should have ruled on the 15 March 2018 Application by rejecting the part relating to the issuance of a scheduling order permitting the GoC to respond to the 13 March 2018 Prosecutor's Response/Request, this request becomes moot.

38. Finally, in relation to the 13 March 2018 Prosecutor's Request, since the core of this Request was to dismiss the 23 February 2018 Application *in limine* and given that I concur with the Prosecutor in this regard, the 13 March 2018 Prosecutor's Request should be considered as granted.

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<sup>29</sup> ICC-01/13-67, para. 6.



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**Judge Péter Kovács**

Dated this Thursday, 15 November 2018

At The Hague, The Netherlands