

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: ICC-01/13  
Date: 28 February 2018

**PRE-TRIAL CHAMBER I**

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

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

**Public Document**

**Request for an extension of time to respond to the “Application for Judicial  
Review by the Government of the Union of the Comoros” (ICC-01/13-58-Conf)**

**Source:** Office of Public Counsel for Victims

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

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Mr James Stewart

**Counsel for the Defence**

**Legal Representatives of the Victims**

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**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

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**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. Introduction

1. The Principal Counsel of the Office of Public Counsel for Victims, acting as legal representative of the unrepresented victims admitted to participate in these proceedings (the “Principal Counsel”),<sup>1</sup> requests an extension of time to respond to the Union of the Comoros’ application for judicial review of the Prosecutor’s decision filed on 29 November 2017 confirming her intention not to investigate the situation relating to the incidents allegedly committed on registered vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia (the “Application for Review”).<sup>2</sup>

2. The Principal Counsel respectfully requests the Chamber to extend the time limit for her response to the Application for Review until 30 March 2018. This extension is objectively justified by the complex nature of the issues at stake, the length of the documents involved, and the need to prepare a complex filing that duly addresses the personal interests of the victims, including the need to consult with and take instructions from her clients on the matter.

## II. Background

3. On 14 May 2013, the authorities of the Union of the Comoros (the “Comoros”) referred to the Prosecutor the situation relating to the incidents allegedly committed

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<sup>1</sup> See the “Decision on the Victims’ Participation in the Situation” (Pre-Trial Chamber I), No. ICC-01/13-18, 24 April 2015, para. 17; and the “Decision on the Requests for Withdrawal of the Legal Representative of Victims pursuant to Regulation 82 of the Regulations of the Court” (Pre-Trial Chamber I), No. ICC-01/13-54, 26 September 2016.

<sup>2</sup> See the “Application for Judicial Review by the Government of the Union of the Comoros”, No. ICC-01/13-58-Conf, 26 February 2018 (the “Application for Review”). A public redacted version of the Application was filed on the same day. See the “Public Redacted Version of ‘Application for Judicial Review by the Government of the Union of the Comoros’”, No. ICC-01/13-58-Red, 26 February 2018.

from 31 May 2010 through 5 June 2010 on registered vessels of the Comoros, the Hellenic Republic and the Kingdom of Cambodia bound for the Gaza Strip.<sup>3</sup>

4. On 6 November 2014, the Prosecutor issued a report in which she concluded that there is “[a] reasonable basis to believe that war crimes under the Court’s jurisdiction have been committed in the context of interception and takeover of the Mavi Marmara by IDF soldiers on 31 May 2010”, but considering that “[t]he potential case(s) that would likely arise from an investigation into the situation 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 Statute”, she decided that “[t]here is no reasonable basis to proceed with an investigation and [...] decided to close this preliminary examination” (the “Decision not to Investigate”).<sup>4</sup>

5. On 29 January 2015, the Comoros requested Pre-Trial Chamber I (the “Chamber”) to review the Decision not to Investigate, and to direct the Prosecutor to reconsider said Decision under article 53(3)(a) of the Rome Statute (the “First Application for Review”).<sup>5</sup>

6. On 16 July 2015, the Chamber rendered its decision on the First Application for Review, requesting, *inter alia*, the Prosecutor to reconsider the decision not to

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<sup>3</sup> See the “Annex 1: Decision Assigning the Situation on Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia to Pre-Trial Chamber I” (Presidency), No. ICC-01/13-1-Anx1, 5 July 2013.

<sup>4</sup> See “Situation on Registered Vessels of Comoros, Greece, and Cambodia: Article 53(1) Report”, No. ICC-01/13-6-AnxA, 4 February 2015 (dated 6 November 2014), paras. 149-151 (the “Decision not to Investigate”).

<sup>5</sup> See the “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”, No. ICC-01/13-3-Conf, 29 January 2015 (the “First Application for Review”).

initiate an investigation into the situation referred to her by the Comoros (the “Review Decision”).<sup>6</sup>

7. On 6 November 2015, the Appeals Chamber dismissed the Prosecutor’s appeal against the Review Decision.<sup>7</sup>

8. On 29 November 2017, the Prosecutor notified her conclusions and the reasons for said conclusions after completing her reconsideration of the Decision not to Investigate (the “Reconsideration Decision”).<sup>8</sup>

9. On 26 February 2018, the Comoros filed the Application for Review,<sup>9</sup> requesting the Chamber to review the Reconsideration Decision and to direct the Prosecutor to review her Decision.

### III. Submissions

10. Pursuant to regulation 35(1) of the Regulations of the Court, “[a]pplications to extend or reduce any time limit [...] ordered by the Chamber shall be made in writing or orally to the Chamber seized of the matter setting out the grounds on which the variation is sought”. Sub-paragraph (2) of said provision further states that “[t]he Chamber may extend or reduce a time limit if good cause is shown [...]”.

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<sup>6</sup> See the “Decision on the request of the Union of the Comoros to review the Prosecutor’s decision not to initiate an investigation” (Pre-Trial Chamber I), No. ICC-01/13-34, 16 July 2015 (the “Review Decision”).

<sup>7</sup> See the “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’” (Appeals Chamber), No. ICC-01/13-51 OA, 6 November 2015.

<sup>8</sup> See the “Notice of Prosecutor’s Final Decision under Rule 108(3)”, No. ICC-01/13-57, 30 November 2017 (the “Reconsideration Decision”).

<sup>9</sup> See *supra* note 2.

11. Interpreting regulation 35 of the Regulations of the Court, the Appeals Chamber has clarified that “[a] *cause is good, if founded upon reasons associated with a person’s capacity to conform to the applicable procedural rule or regulation or the directions of the Court. Incapability to do so must be for sound reasons, such as would objectively provide justification for the inability of a party to comply with his/her obligations*”.<sup>10</sup>

12. In this regard, the Principal Counsel notes the jurisprudence of the Appeals Chamber relevant to the determination of “good cause” pursuant to regulation 35(2) of the Regulations of the Court.<sup>11</sup> The need to prepare complex filings, the length of the documents involved, and the novel and complex nature of the issues at stake are factors to be properly taken into account, following the said jurisprudence.<sup>12</sup>

13. The Principal Counsel submits that the legal issues raised in the Application for Review are indeed novel and complex in nature. Said issues arise from the Reconsideration Decision, which is the result of the first application in the history of the Court of article 53(3) of the Rome Statute and rule 108 of the Rules of Procedure and Evidence. This lack of precedent requires sufficient time for a detailed study of the legal submissions contained in the Application for Review.

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<sup>10</sup> See the “Reasons for the ‘Decision of the Appeals Chamber on the request of counsel to Mr. Thomas Lubanga Dyilo for modification of the time limit pursuant to regulation 35 of the Regulations of the Court of 7 February 2007’ issued on the 16 February 2007” (Appeals Chamber), No. ICC-01/04-01/06-834 OA8, 21 February 2007, para. 7; and the “Reasons for the ‘Decision on the ‘Application for Extension of Time Limits Pursuant to Regulation 35 of the Regulations of the Court to Allow the Defence to Submit its Observations on the Prosecutor’s Appeal regarding the Decision on Evidentiary Scope of the Confirmation Hearing and Preventative Relocation’” (Appeals Chamber), No. ICC-01/04-01/07-653 OA7, 27 June 2008, para. 5.

<sup>11</sup> See the “Decision on the requests for time and page extension” (Appeals Chamber), ICC-01/09-01/11-1971 OA10, 18 September 2015, paras. 6 and 7. See also the “Decision on the application by Counsel for Mr. Thomas Lubanga Dyilo to extend the time limit for the filing of the response to the Prosecutor’s document in support of the appeal” (Appeals Chamber), No. ICC-01/04-01/06-190 OA3, 11 July 2006, para. 4; and the “Decision on Mr Gbagbo’s request for translation and an extension of time for the filing of a response to the document in support of the appeal” (Appeals Chamber), No. ICC-02/11-01/11-489 OA5, 22 August 2013, para. 16.

<sup>12</sup> See, in particular, the “Decision on the requests for time and page extension” (Appeals Chamber), No. ICC-01/09-01/11-1971 OA10, 18 September 2015, paras. 6 and 7.

14. Moreover, the factual scenario to which the abovementioned legal submissions relate is equally very complex. As indicated by the Prosecutor and the Comoros, the incidents allegedly committed on registered vessels of the Comoros, the Hellenic Republic and the Kingdom of Cambodia have been officially reported in different ways by different actors.<sup>13</sup> In these circumstances, the Principal Counsel needs to review whether and if so how each of said reports has been addressed in the Application for Review before submitting her response thereto.

15. Furthermore, the Application for Review is lengthy and substantive. It comprises 60 pages and touches upon many issues of particular interest to the victims participating in these proceedings, such as the Prosecutor's consideration of information regarding the victims that was provided to her after the issuance of the Decision not to Investigate.<sup>14</sup>

16. Finally, the Principal Counsel underlines her obligations to properly inform her clients and to consult and take instructions from them on such an important matter which clearly affects their personal interests. While the Principal Counsel has already communicated to her clients the result of the Reconsideration Decision, she has not discussed with them the implications of the Application for Review, which was only filed on 26 February 2018. In this regard, the Principal Counsel notes that her clients are located in several countries. Adequate time is therefore needed to consult with them.

17. In these circumstances, the Principal Counsel submits that the 10-day time limit envisaged in regulation 34(b) of the Regulations of the Court for her response to the Application for Review is largely insufficient. Considering all the factors

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<sup>13</sup> See, for instance, the Reconsideration Decision, *supra* note 8, para. 102; and the Application for Review, *supra* note 2, para. 8.

<sup>14</sup> See the Application for Review, *supra* note 2, para. 17.

indicated *supra*, she submits that a minimum of 30 days are necessary to prepare a proper response to said Application and that this is a reasonable time limit.

#### IV. Conclusion

18. For the foregoing reasons, the Principal Counsel respectfully requests the Pre-Trial Chamber to extend the time limit for her response to the Application for Review until 30 March 2018, and to entertain this request on an urgent basis considering that the current time limit for her response expires on 9 March 2018.

A handwritten signature in black ink, reading "Paolina Massidda". The signature is written in a cursive style and is underlined with a double horizontal line.

**Paolina Massidda**  
**Principal Counsel**

Dated this 28<sup>th</sup> day of February of 2018

At The Hague, The Netherlands