

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **11 April 2018**

PRE-TRIAL CHAMBER I

Before: Judge Peter Kovács, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Reine Alapini-Gansou

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

Public Document

**Request on behalf of the Government of the Union of the Comoros in respect of
Scheduling Order**

Source: Rodney Dixon QC, and Stoke White Ltd (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
Mr. Rodney Dixon QC

Legal Representatives of the Applicant

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
Rodney Dixon QC

Amicus Curiae

REGISTRY

Registrar
Mr. Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

REQUEST BY THE COMOROS FOR SCHEDULING ORDER

1. The Government of the Union of the Comoros submits this filing to request the Pre-Trial Chamber for a scheduling order given that the deadline of 3 April 2018 for filing submissions in response to the “Application for Judicial Review by the Government of the Union of the Comoros”¹ has now passed.

2. By its Order of 2 March 2018 Pre-Trial Chamber I ordered all the parties to file *all* submissions in response to the Application for Judicial Review by 3 April 2018.² No further Order has been made by the Chamber in respect of (i) the OTP’s Application of 13 March 2018 to stay the parties from addressing the merits of the Application for Judicial Review and to consider only the jurisdiction of the Application *in limine*³, and (ii) the Application by the Comoros immediately thereafter on 15 March 2018⁴ for an order that the OTP’s request be rejected, and that the Chamber maintain its Scheduling Order of 2 March 2018 requiring the parties to file all of their submissions in response to the Application for Judicial Review by the 3 April 2018 deadline, failing which the Government of the Comoros must be permitted an opportunity to respond in full to the OTP’s challenge to the jurisdiction of the Application for Judicial Review (at that stage) by 3 April 2018. The Government specifically requested that “*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.*”⁵

3. Given that the deadline of 3 April 2018 has now passed, that the OTP’s Application *in limine* has not been ruled on, and that the OTP has in effect only filed submissions in response to the Application for Judicial Review in respect of jurisdiction through its request for this issue to be determined *in limine*, the Government of the Comoros requests the

¹ Application for Judicial Review by the Government of the Union of the Comoros, ICC-01/13-58, 26 February 2018 (hereinafter “Application for Judicial Review”).

² Decision on the Request for an Extension of Time, ICC-01/13-60, 2 March 2018 (hereinafter “Scheduling Order of 2 March”).

³ Prosecution’s Response to the Government of the Union of the Comoros’ ‘Application for Judicial Review’ (ICC-01/13-58) (Lack of Jurisdiction), ICC-01/13-61, 13 March 2018 (hereinafter “Prosecution Application on Jurisdiction”).

⁴ Application by the Government of the Comoros regarding the Pre-Trial Chamber’s Scheduling Order, ICC-01/13-62, 15 March 2018 (hereinafter “Application for a Scheduling Order”).

⁵ Application for a Scheduling Order, para. 2.

Chamber to rule on its Application of 15 March 2018 for a scheduling order to respond to the OTP's Application and submissions *in limine*. As highlighted in its filing of 15 March 2018, the Comoros as the Applicant State Party should be entitled to respond to an Application by the OTP to dismiss the entire Application for Judicial Review *in limine* without considering the merits. There are specific arguments relied on by the OTP that the Government has not had a chance to address and which the Government needs to respond to so that the Chamber has its full submissions before any decision is made. Of course if the Chamber is minded to reject the Application *in limine* and to order the OTP to file its submissions on the merits so that they can be considered together with its submissions on jurisdiction, then the Government could through the applicable regulations thereafter seek leave to reply to the OTP's full submissions. However, it is the Comoros' submission that the OTP's motion *in limine* and submissions on jurisdiction should not be considered on their own and decided on at this stage without the Comoros having a fair opportunity to respond to them.

4. The Comoros only asks for the same right of response that the OTP agreed should be afforded to the OPCV and the Victims when it submitted that these parties should have until 3 April 2018 to respond to the OTP's *in limine* Application and submissions.⁶ It is also the same right of response granted to the Prosecution during the proceedings in the first review application when the Comoros requested an *in limine* consideration of the Prosecution's appeal⁷, and the OTP was granted the right to respond to the detailed submissions made by the Comoros on why the Prosecution's appeal should be dismissed *in limine*.⁸ There is no reason to deny the Comoros the same right of response in the current proceedings, especially when they involve a central jurisdictional issue relied on by the OTP (wrongly) to seek to dismiss the judicial review proceedings in their entirety.
5. Given that the Comoros had immediately after the OTP filed its request for *in limine* consideration, submitted its request to respond to this Application, there has been no undue lapse of time or prejudice to the parties. The Comoros acted promptly and appropriately in

⁶ Prosecution Application on Jurisdiction, para. 42.

⁷ Application by the Government of the Comoros to dismiss *in limine* the Prosecution "Notice of Appeal of 'Decision on the request of the Union of the Comoros to review the Prosecutor's decision not to initiate an investigation' (ICC-01/13-34)", ICC-01/13-39, 3 August 2015.

⁸ Prosecution's Urgent Response to the Government of the Union of the Comoros' Application to Dismiss the Appeal *In Limine*, and Request for Extension of Pages under Regulation 37 of the Regulations of the Court, ICC-01/13-40, 4 August 2015.

the circumstances given that the OTP's filing was indeed an application for a particular course of action to be followed, namely for the proceedings on the merits to be stayed and the parties only to file on jurisdiction so that the matter could be considered *in limine*. In the event that the Chamber is of the view that it may have been necessary to request leave from the Chamber to reply to the OTP's filing pursuant to Regulation 24(5) (which the Comoros submits was not required given that the OTP had made a specific application for *in limine* consideration⁹), then the Comoros' request of 15 March 2018 should be considered to be such a request for leave as it in essence asks the Chamber to grant the Comoros leave in a scheduling order to address the arguments raised by the OTP (and it was filed within the time limit set by Regulation 34(c)).¹⁰

6. For all of these reasons, the Government of the Union of the Comoros respectfully requests the Pre-Trial Chamber to rule on its Application for a Scheduling Order of 15 March 2018 and to provide a scheduling order that rightfully permits the Comoros to respond to the OTP's Application *in limine*.



Rodney Dixon QC

Counsel on behalf of the Government of the Union of the Comoros

Dated 11 April 2018

London

⁹ Moreover, as noted above the OTP was not required to apply for leave to reply pursuant to Regulation 24(5) when it responded to the Comoros' *in limine* application during the prior appeal proceedings.

¹⁰ The Comoros could obviously not have applied for leave pursuant to Regulation 24(5) after the 3 April 2018 deadline expired as the OTP did not file its full submissions by then.