

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **15 March 2018**

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 Document

**Application by the Government of the Comoros regarding the Pre-Trial
Chamber's 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
Mr. 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

Requests by the Government of the Comoros

1. The Government of the Comoros files this application pursuant to the Pre-Trial Chamber's "Decision on the Request for an Extension of Time" of 2 March 2018¹, which set the time schedule for the filing of all submissions in the present proceedings, and Rules 107 and 108.² The Comoros makes this application in light of the Prosecution's application of 13 March 2018³ requesting the Chamber to (i) stay the parties from addressing the merits of the Review Application⁴ and to consider the jurisdiction of the Review Application *in limine*, and (ii) proceed immediately to dismiss the Review Application *in limine* for lack of jurisdiction on the basis of the OTP's full submissions in support of this application which have been filed. The OTP asserts that in adopting this new procedure the Chamber need not hear from the Comoros and that no response by the Comoros should be permitted to the OTP's challenge *in limine* - the OTP says that only the participating victims may respond.

2. The Comoros therefore has had to file this application to request (i) that the Pre-Trial Chamber should maintain 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.

¹ Decision on the Request for an Extension of Time, ICC-01/13-60, 2 March 2018.

² The OTP suggests that Pre-Trial Chamber I as presently constituted need not be the Chamber to consider its jurisdictional challenge (see para. 8, 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), and appears eager for a newly constituted Chamber to decide the matter. It is clear that Pre-Trial Chamber I as presently constituted is seized of the case and the Review Application, having issued the scheduling order for the parties, and there is no basis at all for the consideration of the present applications or any other matters whether they concern procedure, jurisdiction or the merits to be considered by any Chamber other than the Chamber presently constituted and seized of the case.

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.

⁴ Application for Judicial Review by the Government of the Union of the Comoros, ICC-01/13-58-Conf, 26 February 2018.

3. The Comoros' first request is that the Chamber should not alter its "Decision on the Request for an Extension of Time" of 2 March 2018 which has set the schedule and timetable for the filing of all submissions on jurisdiction and the merits, namely 3 April 2018. As the Chamber has already ordered, this is the most sensible and practical course, and the Chamber can then render its decision on the Review Application as a whole taking all of the submissions of the parties into account including on jurisdiction and the merits. The OTP should be ordered to comply with the Chamber's Decision of 2 March 2018 and file its submissions on the merits by 3 April 2018, as has already been ordered by the Chamber.⁵
4. In the alternative, were the Chamber minded to separate its consideration of jurisdiction from the merits (which could in fact elongate the proceedings unnecessarily), then the Comoros requests that it be permitted to file its submissions in response to the OTP's *in limine* request, together with the participating victims, by 3 April 2018 (the date currently set by the Chamber for all submissions).
5. The position taken by the OTP that the Comoros should not be allowed to respond to its *in limine* challenge is clearly wrong and untenable, and should be rejected by the Chamber. It is also contrary to the very position taken in the appeal in respect of the first review application in which an *in limine* challenge was considered, and which has been centrally relied on by the OTP in making the present *in limine* application.
6. While the OTP argues that it "does not object to the victims filing their observations" to its jurisdictional challenge and request to dismiss the Review Application *in limine*, the Prosecution submits that "no further submissions by the Comoros are warranted" because, in the Prosecution's opinion, the Government "presented all the jurisdictional arguments it considered necessary as part of that filing."⁶ The Comoros as the applicant State Party must surely be permitted to

⁵ This would require the OTP to re-file its full submissions by 3 April 2018 in response to the Review Application on both jurisdiction and the merits, or request a page extension to file its submissions on the merits in accordance with Regulation 37(2) of the Regulations of the Court. Depending on these submissions as received in full, the Comoros could apply for leave to reply pursuant to Regulation 34(c) of the Regulations of the Court.

⁶ 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, para. 42.

respond to the OTP's challenge, and enjoy the same right that the OTP maintain should be afforded the participating victims. Of course, the Comoros had to include submissions in its Review Application founding the jurisdiction of the application, but that does not preclude it having the right to respond in full to the detailed submissions of the specific application by the OTP to challenge jurisdiction *in limine* (the OTP having used its full 20 page limit pursuant to Regulation 34(b) to address in detail the jurisdiction of the Review Application). Furthermore, there are arguments, cases and sources relied on by the OTP to support its challenge that the Comoros has not addressed, which it should have the opportunity to respond to now that this challenge has been filed by the OTP in full as an *in limine* application.⁷

7. It is misconceived and unfair for the OTP to proceed as if its application to dismiss the Review Application *in limine* is only a 'response' to the Review Application when it is in fact a discrete application in itself for the Chamber to follow a particular procedure that must carry a right of response for the party directly affected. As the OTP will be aware, this is precisely the right it was afforded in the appeal proceedings concerning the first review application. When the Comoros requested an *in limine* consideration of the OTP's appeal⁸, the OTP certainly had the right to respond to the detailed submissions made by the Comoros on why the OTP's appeal should be dismissed *in limine*.⁹
8. Accordingly, the Comoros requests the Pre-Trial Chamber to maintain its existing order on the schedule and not to stay the proceedings on the merits, or alternatively, if it decides to separate jurisdiction from the merits, to permit the Comoros to respond to the OTP's *in limine* challenge by 3 April 2018 when the participating victims are due to file.

⁷ For example see, 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, para. 35-41.

⁸ 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.

⁹ 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.



Rodney Dixon QC

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

Dated 15 March 2018

London