

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/13 OA 2**

Date: **24 January 2019**

THE APPEALS CHAMBER

Before: **Judge Solomy Balungi Bossa, Presiding Judge**
 Judge Chile Eboe-Osuji
 Judge Howard Morrison
 Judge Piotr Hofmański
 Judge Luz del Carmen Ibáñez Carranza

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

Public Document

**Response of the Victims to the “Prosecution’s omnibus request for extension of pages,
extension of time, and suspensive effect”**

Source: **Rodney Dixon QC, and Stoke White Ltd (London), Legal Representatives
of the Victims**

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
Ms. Helen Brady

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. Peter Lewis

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. The Victims of the attack on the Gaza Freedom Flotilla who are represented by the Legal Representative for Victims, Rodney Dixon QC, hereby respond to the “Prosecution’s omnibus request for extension of pages, extension of time, and suspensive effect”¹ in accordance with the Appeals Chamber’s “Order on the filing of responses to the request of the Prosecutor for extension of pages, extension of time, and suspensive effect”, which permitted the Victims until 24 January 2019 to file a response to the Prosecution’s request.²
2. The Victims oppose the Prosecution’s request for the suspension of the Pre-Trial Chamber’s Decision of 15 November 2018 which ordered the Prosecutor to “reconsider her 6 November 2014 Decision in accordance with the [Chamber’s] 16 July 2015 Decision” within six months of the Chamber’s decision i.e. by 15 May 2019.³
3. The Victims wish strongly to emphasise that the deadline of 15 May 2019 as ordered by the Pre-Trial Chamber for the Prosecution to complete its reconsideration should not be altered or suspended. There have already been very considerable delays in this case, and there is no proper reason for any further extension at this stage. The OTP should and can readily reconsider its decision while the appellate proceedings are ongoing, so that no further time is lost, to the prejudice of the Victim’s interests, in particular to know whether their serious allegations of war crimes will be investigated by the ICC. There simply must be finality after nearly 6 years of this case being before the ICC. It is patently unreasonable and disproportionate for the Victims to have to wait any longer. It was for these fundamental reasons that the Pre-Trial Chamber in the interests of justice and finality set a very clear deadline for the OTP to address the matter and decide on initiating an investigation in light of the Chamber’s original decision. This finding and order of the Pre-Trial Chamber should be upheld.

¹ “Prosecution’s omnibus request for extension of pages, extension of time, and suspensive effect”, ICC-01/13-74, 21 January 2019 [*hereinafter* OTP Request].

² “Order on the filing of responses to the request of the Prosecutor for extension of pages, extension of time, and suspensive effect”, ICC-01/13-76, 22 January 2019.

³ “Decision on the ‘Application for Judicial Review by the Government of the Union of the Comoros’”, ICC-01/13-68, 15 November 2018, para. 121 [*hereinafter* PTC Reconsideration Decision].

4. The Victims make no submissions on the Prosecution's other requests on the extension of time for filings its Appeal Brief, and on an extension of the page limit for its Appeal Brief. The key issue for the Victims is that the deadline properly set by the Pre-Trial Chamber of 19 May 2019 should not be extended, with even further delays. The Appeals Chamber is urged to consider the OTP's appeal within this timeframe, while the OTP in accordance with its mandate gets on with addressing the errors identified by the Pre-Trial Chamber.

II. Submissions

5. In opposing the Prosecution's request for a suspension, the Victims submit that any further delays to the Prosecution's urgent consideration of whether to open an investigation in accordance with the Pre-Trial Chamber's decision of 16 July 2015 would be grossly unfair to the Victims, and would only further undermine their rights.
6. The "internationally recognized human rights of victims [...] to know the truth, to have access to justice and to request reparations,"⁴ have been appropriately highlighted by the Pre-Trial Chamber, not only in its decision on reconsideration in this matter, but also with respect to victims waiting to find out "whether or not they will be in a position to exercise their rights before this Court"⁵ in other Preliminary Examinations.⁶ The Pre-Trial Chamber pointedly reminded the Prosecution that leaving victims "in a state of uncertainty" is "prejudicial" to their rights, and that protecting victims against this prejudice is entirely dependent on whether the Prosecution's "decision ... to open an investigation" is addressed in a prompt manner that reflects a true understanding of the detrimental effect delays would have on the Victims.⁷
7. The Victims wish to stress their deep frustration with the unreasonable length of time it has, and is still taking, to reach a properly considered decision on whether the very serious crimes committed against them will be investigated. It has been nearly nine years since the attack on the Gaza Freedom Flotilla, and almost six years since the matter was referred to

⁴ PTC Reconsideration Decision, para. 120 quoting *Request under Regulation 46(3) of the Regulations of the Court*, "Decision on the 'Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute'", ICC-RoC46(3)-01/18-37, 6 September 2018, para. 88.

⁵ PTC Reconsideration Decision, para 120.

⁶ *Request under Regulation 46(3) of the Regulations of the Court*, "Decision on the 'Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute'", ICC-RoC46(3)-01/18-37, 6 September 2018, para. 88.

⁷ PTC Reconsideration Decision, para. 120.

the ICC in May 2013. Importantly, it has been over three years since the Pre-Trial Chamber originally found errors in the Prosecution’s decision not to open an investigation.⁸

8. Indeed, in its Decision on Reconsideration, the Pre-Trial Chamber highlighted that this “*matter has been under consideration for an extended period of time*” and although “preliminary examinations must be concluded within a reasonable time”, timely consideration “*has manifestly not been the case for the preliminary examination in the situation at stake.*”⁹ The Pre-Trial Chamber specifically recognised that “it took more than two years”¹⁰ for the Prosecution to reconsider its decision after the Pre-Trial Chamber’s first Decision on reconsideration issued in July 2015,¹¹ and after the “6 November 2015 Appeals Chamber decision declaring [the Prosecution’s] appeal inadmissible,”¹² and that this delay by the Prosecution was “*irreconcilable with the Prosecutor’s duty to reconsider her decision ‘as soon as possible’*”¹³ and with respect to the rights of the victims.¹⁴
9. In light of these clear findings, the Victims submit that rather than getting on with reconsidering the decision on opening an investigation in accordance with the Pre-Trial Chamber’s Decision of 16 July 2015, the Prosecution is repeating the whole process again. The Prosecution should instead proceed immediately with diligently reconsidering its decision in line with the Pre-Trial Chambers decision of 16 July 2015.
10. In order to bring finality to this matter, the Pre-Trial Chamber fixed a clear and indisputable deadline for the Prosecution to comply with its original decision of 16 July 2015 – within six months by 15 May 2019.¹⁵ The Victims were genuinely heartened by the Chamber’s holding that this process had gone on for far too long. In response to the OTP’s request to

⁸ See, “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, 16 July 2015.

⁹ PTC Reconsideration Decision, para. 119.

¹⁰ PTC Reconsideration Decision, para. 119.

¹¹ “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, 16 July 2015.

¹² PTC Reconsideration Decision, at para. 119 citing “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’”, ICC-01/13-51, 6 November 2015.

¹³ PTC Reconsideration Decision, para. 120.

¹⁴ PTC Reconsideration Decision, para. 120 quoting *Request under Regulation 46(3) of the Regulations of the Court*, “Decision on the ‘Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute’”, ICC-RoC46(3)-01/18-37, 6 September 2018, para. 88.

¹⁵ PTC Reconsideration Decision, para. 121.

suspend the deadline, the Pre-Trial Chamber has again rightly reiterated that there should be no stay as it would only cause further delays unnecessarily.¹⁶

11. The Victims support the Pre-Trial Chamber’s conclusion that a stay on reconsideration is entirely unnecessary. The Prosecution can readily reconsider its decision while the appeal is being heard. The ‘resource’ arguments used by the OTP are completely misplaced.¹⁷ There is no need for the OTP to undertake any investigations, nor to produce another 144-page analysis. The OTP should do only what the Chamber has ordered – address the errors identified by the Chamber and move forward expeditiously without delay. The OTP can use the “detailed and extensive scrutiny”¹⁸ it has already undertaken, now to address the specific errors outlined by the Chamber.

Conclusion

12. For all the reasons set out above, the Victims respectfully request that the Prosecution’s request for suspensive effect is rejected, and that the deadline of 15 May 2019 is maintained while the appellate proceedings are ongoing and completed as soon as possible.



Rodney Dixon QC

Legal Representative of the Victims

Dated 24 January 2019

London

¹⁶ “Decision on the Prosecutor’s request for leave to appeal the ‘Decision on the ‘Application for Judicial Review by the Government of the Union of the Comoros’””, ICC-01/13-73, 18 January 2019, para. 54.

¹⁷ See, OTP Request, para. 7; and “Request for Leave to Appeal the ‘Decision on the ‘Application for Judicial Review by the Government of the Union of the Comoros’””, ICC-01/13-69, 21 November 2018, para. 3.

¹⁸ “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. 3.