

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **15 July 2016**

PRE-TRIAL CHAMBER I

Before: **Judge Joyce Alouch, 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**

**Confidential and *Ex Parte* Document available only to VPRS, OPCV and the
Legal Representatives of Victims**

Request in accordance with Regulation 82 of the Regulations of the Court

Source: **Sir Geoffrey Nice QC and Rodney Dixon QC, Legal
Representatives of Victims**

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

The Office of the Prosecutor

Counsel for the Defence

Legal Representatives of Victims

Sir Geoffrey Nice QC

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

Ms. Sarah Pellet

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms. Isabelle Guibal

Other

I. INTRODUCTION

1. The Legal Representatives of Victims, Sir Geoffrey Nice QC and Rodney Dixon QC, hereby submit this request for the leave of the Pre-Trial Chamber in accordance with Regulation 82 of the Regulations of the Court, and at the suggestion of the Victims Participation and Reparations Section (VPRS). The Legal Representatives of Victims currently represent 342 victims in the proceedings in Situation ICC-01/13, while the Office of Public Counsel for Victims (OPCV) represent victims who were unrepresented at the time of being assigned to the OPCV.
2. The Pre-Trial Chamber's leave is requested to permit the OPCV to withdraw its representation in respect of 35 victims participating in Situation ICC-01/13 in light of the powers of attorney signed by these victims appointing Sir Geoffrey Nice QC and Rodney Dixon QC as their legal representatives for the proceedings before the ICC¹. The OPCV has indicated that it does wish to withdraw its representation and has no objection to the Chamber's leave being granted in the manner requested in this motion. The VPRS can then designate Sir Geoffrey Nice QC and Rodney Dixon QC as the Legal Representatives for these 35 victims in accordance with their powers of attorney.
3. This request is submitted pursuant to Regulation 82 of the Regulations of the Court, as well as Article 68(3) of the Statute, and Rule 90(1) of the Rules of Procedure and Evidence.

I. BACKGROUND

4. On 6 November 2014, the Prosecution issued its Article 53(1) Decision with respect of Situation 01/13, in which it decided that there was no reasonable basis to initiate an investigation and thus closed the preliminary examination into crimes committed during the attack on the Gaza Freedom Flotilla. The Prosecution found that although there is a reasonable basis to believe that war

¹ The names of the 35 individuals are included in Confidential and Ex parte Annex 1. A copy of each power of attorney was submitted to VPRS by the Legal Representatives of Victims on 27 May 2016.

crimes were committed under the jurisdiction of the Court, the likely cases to arise as a result of an investigation would not be of sufficient gravity to justify further action by the court and to be admissible pursuant to Articles 17(1)(d) and 53 (1)(b) of the Statute.²

5. On 29 January 2015, the Government of the Union of the Comoros made an “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” in which the Government requested the Pre-Trial Chamber to review the Prosecution’s 6 November 2014 decision not to open an investigation in Situation ICC-01/13 and direct the Prosecution to reconsider its decision.³
6. On 17 February 2015, the Legal Representatives of Victims submitted an application requesting that the Pre-Trial Chamber “grant the victims the right to participate in the proceedings concerning the Application for Review and [] authorize them through their representatives to file their written observations as victims.”⁴
7. On 24 April 2015, the Pre-Trial Chamber issued the “Decision on the Victims’ Participation” in which the Chamber found that “victims’ participation in the context of the article 53(3) review proceedings is a mandatory requirement” and that those victims entitled to participate may submit observations to the Chamber on the Prosecution’s decision and the litigation relevant to the Chamber’s review of the Prosecution’s decision.⁵ In addition, the Chamber “[a]ppoint[ed] Paolina Massidda from the OPCV to be the legal representative of unrepresented victims for the purposes of the present article 53 proceedings.”⁶
8. On 8 May 2015, VPRS submitted a report to the Pre-Trial Chamber that assessed which victim applications fell within the scope of the Situation and thus allowed

² See, Notice of filing the report prepared by the Office of the Prosecutor pursuant to article 53(1) of the Rome Statute, Public Annex A, ICC-01/13-6-AnxA, 4 February 2015.

³ 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, ICC-01/13-3-Conf, 29 January 2015.

⁴ Registry Transmission of an Application submitted by Sir Geoffrey Nice QC and Rodney Dixon QC on behalf of KC Law (London) and the IHH Humanitarian Relief Foundation who represent the victims, Public Annex 1, ICC-01/13-7-Anx1, 19 February 2015, para. 23.

⁵ Decision on the Victims’ Participation, ICC-01/13-18, 24 April 2015, paras. 8, 19-21.

⁶ Decision on the Victims’ Participation, ICC-01/13-18, 24 April 2015, p. 10.

the victim to participate in the review proceedings, and also whether the victim was considered represented by Counsel or unrepresented.⁷

9. On 15 June 2015, the Legal Representatives of Victims received an email from VPRS stating that the Registry obtained clarification from the Presiding Judge of the Pre-Trial Chamber on the issue of further power of attorneys received from victims, and were informed that the Chamber decided that any power of attorney from a participating victim submitted to VPRS after 8 May 2015 would not be taken into account and the victim would be considered unrepresented – and therefore assigned to be represented by OPCV – for the purpose of the Article 53 proceedings.⁸
10. On 16 July 2015, the Pre-Trial Chamber issued the “Decision on the request of the Union of the Comoros to review the Prosecutor’s decision not to initiate an investigation”, finding that errors made by the Prosecution “materially affect[ed] the validity of the Prosecutor’s conclusion that the potential case(s) arising from the situation referred to her by the Comoros would not be of sufficient gravity to justify further action by the Court within the meaning of article 17(1)(d) of the Statute,” and requested that the Prosecutor “reconsider her decision not to initiate an investigation.”⁹
11. On 6 November 2015, the Appeals Chamber issued 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’” finding that the Prosecution’s appeal of the Pre-Trial Chamber’s decision of 16 July 2015 is inadmissible and dismissed it *in limine*.¹⁰ These review proceedings were thus concluded.

⁷ Report on Applications Received from Victims who have Communicated with the Court pursuant to Decision ICC-01/13-18, ICC-01/13-21, 8 May 2015.

⁸ Email from the Chief of the Victims Participation and Reparations Section (VPRS) to the Legal Representatives of Victims and OPCV, 15 June 2015.

⁹ 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 2016, paras. 49-51.

¹⁰ 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, para. 66.

12. On 27 May 2016, the Legal Representatives of Victims communicated with VPRS about powers of attorney they had received from a further 35 participating victims that were signed and submitted to VPRS after 8 May 2015. The Legal Representatives of Victims delivered copies of these powers of attorney received following the 8 May 2015 deadline set by the Pre-Trial Chamber (many dated only days after the 8 May deadline), and included their correspondence with the OPCV about re-assigned the representation of these victims given that the Article 53 review proceedings had concluded. The Legal Representatives informed VPRS that OPCV had no objection to these 35 victims being released from the representation by OPCV and reassigned to Counsel of their choice as indicated in their powers of attorney.¹¹
13. On 13 June 2016, the Legal Representatives of Victims received an email from VPRS stating that although OPCV agreed to withdraw representation of the 35 victims due to their the powers of attorney, Regulation 82 of the Regulations of the Court requires that prior to withdrawal of counsel leave of the Court must be obtained. VPRS therefore stated that it would need to receive an order from the Pre-Trial Chamber allowing the withdrawal of OPCV's representation of the 35 victims before it could consider changing the representation of the 35 victims to the Legal Representatives of Victims in accordance with the powers of attorney.¹²

II. SUBMISSIONS

14. Regulation 82 of the Regulations of the Court provides that: "*Prior to withdrawal, legal representatives of victims shall seek the leave of the Chamber.*"
15. Rule 90(1) of the Rules of Evidence and Procedure provides that: "*A victim shall be free to choose a legal representative.*"

¹¹ Email from the Legal Representatives of Victims to VPRS, 27 May 2016; Emails between the Legal Representatives of Victims and Principal Counsel of the Office of the Public Counsel for Victims, 24, 26 and 27 May 2016.

¹² Email from the VPRS to the Legal Representatives of Victims and OPCV, 13 June 2015.

16. Article 68(3) of the Statute provides that: *“Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.”*
17. As noted above, the Presiding Judge of the Pre-Trial Chamber’s direction was communicated to the Legal Representatives of Victims on 15 June 2015 that “any person from whom a power of attorney had not been received by the Registry by 08 May 2015 shall be considered unrepresented and will be represented by the OPCV for the purposes of the article 53 proceedings related to the Situation on the Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia.”¹³
18. Following the Appeals Chamber’s decision of 6 November 2015, which dismissed the Prosecution’s appeal of the Pre-Trial Chamber’s decision on the Article 53 proceedings, the Article 53 proceedings concluded. The decision from the Appeals Chamber effectively ended the relevant litigation regarding the Article 53 request for review, bringing those proceedings to an end.¹⁴ This is also made clear in the Appeals Chamber’s “Decision on suspensive effect”, which found that the Prosecution may suspend the process of reconsideration, as ordered by the Pre-Trial Chamber, until the end of the Article 53 review proceedings.¹⁵ Since the Appeals Chamber’s decision of 6 November 2015, the Prosecution has begun the process of reconsideration.
19. Accordingly, as the Article 53 proceedings have concluded, any powers of attorney received after 8 May 2015 may now be considered by VPRS so that

¹³ Email from the Chief of the VPRS to the Legal Representatives of Victims and OPCV, 15 June 2015 (emphasis added).

¹⁴ See for example, Decision following the declaration of inadmissibility of the case against Abdullah Al-Senussi before the Court, ICC-01/11-01/11-567, 7 August 2014, paras. 5-6.

¹⁵ Decision on suspensive effect, ICC-01/13-43, 6 August 2015, para. 8.

those victims may be represented by the legal representatives of their choice, as provided for in Rule 90(1), in the proceedings going forward.

20. Although the Article 53 proceedings of review have concluded, Situation 01/13 is still active due to the Prosecution's reconsideration of the decision whether to open an investigation. The victims continue to be actively involved in Situation 01/13 through their lawyers, as the personal interests of the victims are directly affected by the Prosecution's process of reconsideration about whether to initiate an investigation. The Legal Representatives of Victims have been communicating with the Prosecution, on behalf of the victims they represent, during the process of reconsideration in order to provide further, and important, information relevant to re-consideration process.¹⁶ On 14 April 2016, the Prosecution wrote to the Legal Representatives of Victims asking them to provide any materials from the victims' applications for participation before the Court which they wish to submit.¹⁷ The Legal Representatives are currently in the process of communicating with the victims and gathering this information to submit to the Prosecution, and have been providing these materials to the Prosecution.
21. It is most important that the victims who have chosen a legal representative and submitted a power of attorney to VRPS, but who did not meet the 8 May 2015 deadline, are now allowed to communicate and work with the legal representatives of their choice in order to communicate their views and any relevant information to the Prosecution before it concludes its process of reconsideration.
22. Given that the 35 victims who are the subject of this motion have provided their powers of attorney to VPRS – many of them very shortly after the 8 May 2015 deadline – they should be permitted as soon as possible to be represented by their lawyers in the proceedings that are following the conclusion of the review proceedings.

¹⁶ The Victims has communicated with the Prosecution and provided further information to the issue of gravity, for example, on the following dates – 28 January 2016, 1 April 2016, 29 April 2016, 8 June 2016.

¹⁷ Letter from Madame Prosecutor to the Legal Representatives for Victims, 14 April 2016.

V. CONCLUSION

23. For all of the reasons above, the Legal Representatives respectfully request that the Pre-Trial Chamber grant leave for the OPCV to withdraw from representing the 35 victims listed in this request pursuant to Regulation 82. The VPRS is then requested pursuant to Rule 90(1) to reassign the Legal Representatives of Victims, Sir Geoffrey Nice QC and Rodney Dixon QC, to represent these 35 victims in accordance with their powers of attorney.

Word Count: 2853¹⁸



Sir Geoffrey Nice QC

Rodney Dixon QC

Legal Representatives of Victims

Dated 15 July 2016
London
United Kingdom

¹⁸ The Victims hereby make the required certification: ICC-01/11-01/11-565 OA6, para.32.