

# **ANNEX 1**

# **PUBLIC**

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **20 March 2015**

**PRE-TRIAL CHAMBER I**

**Before:**                    **Judge Joyce Alouch  
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 for Leave to Reply to “Prosecution Response to the Application  
Submitted on Behalf of KC Law (London) and IHH Humanitarian Relief  
Foundation (ICC-01/13-7)”**

**Source:**                    **Sir Geoffrey Nice QC and Rodney Dixon QC on behalf of KC Law  
(whose company name has changed to Stoke & White LLP) and  
the IHH Humanitarian Relief Foundation who represent 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

**Counsel for the Defence**

**Legal Representatives of Victims**

**Legal Representatives of the Applicant**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for Victims**

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

**States Representatives**

**Amicus Curiae**

## **REGISTRY**

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**Registrar**  
Mr. Herman von Hebel

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**  
Ms. Fiona McKay

**Other**

## **I. INTRODUCTION**

1. The Victims of the attack on the Gaza Freedom Flotilla submit this request for leave to file a reply to the “Prosecution Response to the Application Submitted on Behalf of KC Law (London) and IHH Humanitarian Relief Foundation (ICC-01/13-7)” of 13 March 2015, which was circulated on Monday 16 March 2015.<sup>1</sup>
2. The Victims, as listed in Confidential Annex 1 to the Application of 17 February 2015, file this request pursuant to Regulations 24(5), 31(1) and 34(c) of the Regulations of the Court.
3. The Victims seek leave to reply to the Prosecution’s Response in order to reply to two key submissions made by the Prosecution which necessitate a response from the Victims in order for the Chamber to be assisted in adjudicating the Application of 17 February 2015,<sup>2</sup> namely that:
  - Certain of the Victims should be excluded from participating in the proceedings as victims in that there is some doubt as to whether they are affected by the crimes in question, based on the information available to the Prosecutor, and including because certain of them were not passengers on board of the ship on which the Prosecution has found that there is a reasonable basis to believe that crimes were committed, the Mavi Marmara<sup>3</sup>; and,
  - The views of the Victims should not be submitted by Counsel and lawyers who represent the Government of the Comoros in the proceedings.<sup>4</sup>

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<sup>1</sup> Prosecution Response to the Application Submitted on Behalf of KC Law (London) and IHH Humanitarian Relief Foundation (ICC-01/13-7), ICC-01/13-8, 13 March 2015 (hereinafter “Prosecution Response”). For the purpose of Regulation 33(1) and Regulation 34(c) of the Regulations of the Court, it is noted that the Prosecution’s Response was distributed to the Applicant on Monday 16 March 2015 at 10:11.

<sup>2</sup> Application Concerning the Participation of Victims in the Review Proceedings pursuant to Article 53(3)(a), ICC-01/13-7-Anx1, 17 February 2015 (hereinafter “Victims’ Application to Participate”). This application was transmitted to the parties on 19 February 2015 by the Registry via filing number ICC-01/13-7.

<sup>3</sup> See, Prosecution Response, paras. 2, 12.

<sup>4</sup> Prosecution Response, para. 4.

4. These submissions address new and important matters which the Victims should be given an opportunity to reply to before the Chamber determines the Application. The Prosecution's arguments that certain Victims should be prevented from participating are clearly vital to reply to so that these Victims are given a chance to submit to the Chamber the full and proper basis on which they argue that they should be granted victim status in the present proceedings. The Prosecutor has identified 55 Victims, amongst others, about whom "doubt" exists in the Prosecution's submission as to whether they should be permitted to participate as victims. It is only fair that a reply should be permitted in respect of the doubts raised by the Prosecution before any decision is made by the Chamber. In respect of certain of these Victims, the Prosecution has in fact asked for a reply from the Victims to address whether they were on board the Mavi Marmara so that the Prosecution can confirm that it has no objection to their participation (see first bullet point on p. 9). This request clearly requires a reply from the Victims so that the Chamber can have all relevant information before it in order to determine the matter.

## **II. SUBMISSIONS**

5. The request for leave to reply in respect of the above matters is filed pursuant to Regulation 24(5) which provides that:

*"Participants may only reply to a response with the leave of the Chamber unless otherwise provided in these Regulations."*<sup>5</sup>

6. Regulation 34(c) states that:

*"Subject to leave being granted by a Chamber in accordance with regulation 24, sub-regulation 5, a reply shall be filed within ten days of notification in accordance with regulation 31 of the response."*

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<sup>5</sup> Regulation 28, Regulations of the Court.

### **Leave to reply in respect of Victims questioned by the Prosecution**

7. The Prosecution does not object to the vast majority of the Victims being entitled to participate in the proceedings. The Prosecution has then provided specific observations (both in the Response and in Confidential Annex A) on whether certain victim applications should be accepted by the Pre-Trial Chamber to participate in the proceedings. In particular, the Prosecution states that “[w]ith respect to 55 of the Applicants ... the Prosecution possesses information which raises doubt as to whether they were affected by the apparent crimes aboard the Mavi Marmara.”<sup>6</sup> The Prosecution notes that this submission is made “without the benefit of access to materials in the possession of VPRS.”<sup>7</sup>
8. In addition, the Prosecution states that “[w]ith respect to 8 applicants, the Prosecution has been unable to match them with the information in its possession concerning passengers aboard the Mavi Marmara.”<sup>8</sup> The Prosecution thus requests that the Victims’ legal representatives “confirm to the Pre-Trial Chamber that these individuals were indeed passengers aboard the Mavi Marmara” and if this is done “the Prosecution would not object to their participation in these proceedings.”<sup>9</sup> This plainly indicates that a reply is requested and required from the Victims to the issues raised in the Prosecution’s Response.
9. The questions raised about the Victims in the group of 55, similarly require a reply from these Victims before any decision is made about their status. In particular, the Prosecution’s argument that only victims of crimes for which the Prosecution found a reasonable basis in its Report should be permitted to participate, needs to be replied to by those the Prosecution seeks to exclude. The Prosecution asserts that to include Victims who were not on the Mavi Marmara would “pre-judge the substantive outcome of the Request for Review”.<sup>10</sup> However, it would equally pre-judge the decision if those Victims

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<sup>6</sup> Prosecution Response, para. 12.

<sup>7</sup> Prosecution Response, para. 12.

<sup>8</sup> Prosecution Response, para. 12.

<sup>9</sup> Prosecution Response, para. 12.

<sup>10</sup> Prosecution Response, para. 9.

were excluded from being involved in the very proceedings which are underway to determine the scope and jurisdiction of the present Situation, and thus whether an investigation will be opened. It is therefore crucial that they are entitled to reply on this matter as their very argument is that the crimes they suffered should be taken into account when deciding whether to open an investigation. There is also the essential question of how they were affected by the events on the Mavi Marmara which should rightly be addressed in a reply to the Prosecution's submissions.

10. Given the importance of victim participation not only to the mandate of the Court, but to the rights of the individuals affected, it is submitted that the Prosecution's questions about certain individual victims should not be determined by the Chamber without the Victims being heard and having the opportunity to reply. As recognised by the Prosecution, "victims' participation is an essential feature of the Court and its law."<sup>11</sup>
11. Furthermore, as noted above, for certain of the Victims the Prosecution has in fact invited a reply and more information from the Victims, which it is submitted should be permitted by the Chamber so that it can have all relevant information available in order to make its determination.

### **The representation of the Victims**

12. The Prosecution objects to KC Law (whose company name has now changed to Stoke & White LLP) and Counsel representing the Government of the Comoros and the Victims in the proceedings.<sup>12</sup> The Prosecution does not allege any conflict of interest, as plainly there is none. This is clearly an issue to which the Victims should be entitled to respond so that their views on the representation they have chosen and wish to have in the proceedings is taken into account. They can explain how their observations will be assembled and be based on

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<sup>11</sup> Prosecution Response, para. 5.

<sup>12</sup> Prosecution Response, paras. 13-15.

their own views and concerns, and not those of any other party, and hence will be “distinct and different”<sup>13</sup>.

13. The only reason that the Prosecution relies on in support of its objection is that Counsel and Stoke & White could “inappropriately” use the Victim’s observations as a further reply to the Prosecution’s response to the Request for Review.<sup>14</sup> A reply to this unsubstantiated claim is warranted in order to show that it is in the circumstances not a proper reason to take any objection.
14. In this regard, the Victims must be given the opportunity to explain their long relationship with IHH and Stoke & White, and the Counsel instructed, and that they have consented to their representatives acting on behalf of the Government of Comoros, particularly given that the Comoros is seeking to persuade the Prosecution to open an investigation into the Situation, as are the Victims, and has relied on the Victims’ evidence to request that an investigation is initiated at the ICC. It is submitted that these are all good reasons to permit the Victims to reply to the Prosecution’s submissions.

### **III. CONCLUSION**

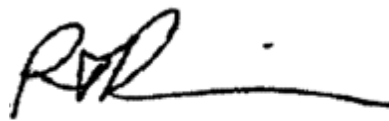
15. For all of the above reasons, it is submitted that the Victims have shown good cause to reply to the specific issues identified above. The Chamber is thus respectfully requested to grant leave to reply to the “Prosecution Response to the Application Submitted on Behalf of KC Law (London) and IHH Humanitarian Relief Foundation (ICC-01/13-7)”.

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<sup>13</sup> Victims’ Application to Participate, para. 5.

<sup>14</sup> Prosecution Response, para. 15.





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**Sir Geoffrey Nice QC**  
**Rodney Dixon QC**

**Counsel instructed by Stoke & White LLP and IHH Humanitarian Relief  
Foundation on behalf of the victims**

Dated 20 March 2015  
London,  
United Kingdom