

**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



Original: **English**

No.: ICC-01/13  
Date: **17 April 2015**

**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**

**Prosecution's Response to the Government of the Union of the Comoros'  
Application for Leave to Reply in Support of its Application under article 53(3) of  
the Rome Statute (ICC-01/13-15)**

**Source:** Office of the Prosecutor

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

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## **REGISTRY**

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## Introduction

1. The Government of the Union of the Comoros (“Comoros”) seeks leave to file a reply, addressing six issues,<sup>1</sup> in support of its application under article 53(3) of the Rome Statute (“Statute”).<sup>2</sup> The Application fails to show good cause for reply and should be dismissed. Each of the six issues relates to a matter necessarily falling within the scope of the Article 53(3) Application or merits dismissal *in limine* because it is unsubstantiated or irrelevant to these proceedings.

## Submissions

2. In general, a “reply must be narrowly tailored to only address new issues” raised in a response.<sup>3</sup> This approach conforms with the consistent jurisprudence acknowledged by the Comoros that good cause must be shown for leave to reply to be granted,<sup>4</sup> in the sense that the Chamber will be assisted by the additional submissions.<sup>5</sup> Having regard to the principle of judicial economy, a Chamber will not be assisted by additional submissions on issues falling reasonably within the scope

<sup>1</sup> See ICC-01/13-15 (“Application”). The Comoros contends, variously, that the Office of the Prosecutor (“Prosecution”) has changed its position concerning extra-jurisdictional considerations (Application, paras.4, 9-13; “First Issue”) and any link between the IDF operation to intercept the flotilla and the crimes (“Identified Crimes”) for which the Prosecution found a reasonable basis under article 53(1)(a) of the Statute (Application, paras.4, 9, 14-17; “Second Issue”). The Comoros further seeks leave to reply on the standard of review applicable to these proceedings (Application, paras.4, 18-21; “Third Issue”), the factual assertions generally made by the Prosecution (Application, paras.4, 22-27; “Fourth Issue”) and specifically with regard to potential perpetrators of the Identified Crimes (Application, paras.4, 28-29; “Fifth Issue”), and on the question of the Prosecution’s access to “over 230 victim applications that have been filed with VPRS [the Victims Participation and Reparations Section of the Registry]” (Application, paras.4, 28, 30; “Sixth Issue”). Although the Comoros has grouped some of these arguments under the same sub-heading, the Prosecution has addressed them as six distinct issues in the interest of clarity.

<sup>2</sup> See ICC-01/13-3-Red (“Article 53(3) Application”). See also ICC-01/13-6-AnxA (“Report”); ICC-01/13-14-Red (“Response”).

<sup>3</sup> See ICC-01/05-01/08-3165-Red, para.5. See also ICC-01/05-01/13-893-Red, para.10 (rejecting a request for “leave to reply in order to clarify the record in the face of alleged misrepresentations” because “it does not identify any new issue which arises from the [...] Response”).

<sup>4</sup> Application, paras.7, 21.

<sup>5</sup> See e.g. ICC-02/11-01/11-775, para.7 (“[t]he Single Judge therefore considers that the Chamber may benefit from [...] submissions in reply”); ICC-01/05-01/98-3233, para.10 (“the Chamber considers it may benefit from the defence’s views on the nine issues identified”); ICC-01/05-01/08-3165-Red, para.5 (“[t]he Chamber is of the view that it may benefit from the defence’s views on certain issues set out in its Request”); ICC-01/09-02/11-979, para.6 (“the Request for Leave to Reply identifies some new issues of law and fact on which [the Chamber] may benefit from receiving further observations; [...] the Chamber is not persuaded that submissions on the remainder of the issues would be of assistance to it”).

of the moving party's original arguments.<sup>6</sup> Nor will it be assisted by additional submissions on matters which have been adequately developed by the Parties, even if the Parties disagree on the applicable law, facts, or procedure.

3. It is self-evident, furthermore, that good cause for a reply may only be established on the basis of a well-founded interpretation of the relevant response. A reply is not a vehicle to address phantom, hypothetical, or irrelevant concerns. The arguments of the moving party, if accepted, must also be sufficiently developed to show that the relevant test (in this case, good cause) is met. Failure in either of these respects should merit dismissal of the argument *in limine*.

4. Applying these tests, as set out in the following paragraphs, there is no good cause to grant leave to reply on the six issues presented in the Application. The logic that a party is justified in seeking leave to reply merely because a respondent presents a legal or factual argument which disagrees with the applicant's original submission (or its underlying premise) is both faulty and circular.

5. Should leave be granted, however, the Prosecution does not oppose the deadline of 30 April 2015 proposed by the Comoros.<sup>7</sup> Any reply filed should not in any event exceed 20 pages,<sup>8</sup> and a narrower page limit may be justified.

***Leave to reply should not be granted for the First Issue***

6. The Prosecution has not shifted from the position set out in the Report:<sup>9</sup> it will consider circumstances outside the Court's jurisdiction only when the facts of the

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<sup>6</sup> See e.g., *mutatis mutandis*, ICC-01/09-01/11-1417 OA7 OA8, para.13 (rejecting a request to make additional submissions in support of an interlocutory appeal—albeit under the distinct provision of regulation 28 of the Regulations of the Court, rather than as a reply—on the basis that the issues for which leave was sought fell “within the ambit of the issues on appeal”, that the arguments in response were “foreseeable” in the circumstances, and that the applicants had already received the material possibility of presenting “all arguments” within the scope of their appeals). See also ICC-01/13-12, para.2 (submitting that “a reply should not be a procedural vehicle to address oversights in the original motion, but only issues arising from a response to that motion which could not reasonably have been anticipated”).

<sup>7</sup> Application, para.32.

<sup>8</sup> See Regulations of the Court, regulation 37(1).

situation show a rational link with those broader circumstances (the First Issue).<sup>10</sup> The Comoros therefore does not show a new issue arising from the Response, but instead seeks only to make further arguments to reinforce its position in the Article 53(3) Application. This is not good cause for granting leave to reply.

7. Although the Prosecution expressly “clarified” the First Issue in the Response,<sup>11</sup> it did so because the Comoros had directly raised the matter in this litigation. The material reasoning was nonetheless implicit in the conclusions and general approach of the Report.<sup>12</sup> The Prosecution’s approach in further explaining its meaning was consistent with the purpose of the Response, already noted by the Pre-Trial Chamber, which was “to clarify any areas of agreement or disagreement with [the Comoros], and to address [Comoros’] concerns in an open and public forum”.<sup>13</sup>

8. Specifically, the clarification was relevant and necessary because it was directly material to the Comoros’ argument that there was an inconsistency in the Prosecution’s reasoning in the Report. In the Article 53(3) Application, the Comoros first noted:

The findings made by the Prosecutor in respect of the occupation and the blockade [...] are critical. They indicate that the Prosecutor accepts that key factual and legal considerations that arise *beyond* what occurred on board the vessels of the Flotilla (and the particular vessels that are registered to ICC States Parties including the Applicant) are relevant to whether the acts that occurred *on* the Flotilla constitute crimes within the ICC’s jurisdiction.<sup>14</sup>

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<sup>9</sup> *Contra* Application, paras.4, 9.

<sup>10</sup> Response, para.53.

<sup>11</sup> Response, paras.53-55.

<sup>12</sup> *Contra* Application, para.11 (asserting that “[t]his test was never expressed or relied on in the [Report]”).

<sup>13</sup> See ICC-01/13-5, para.5 (quoting ICC-01/13-4, para.9).

<sup>14</sup> Article 53(3) Application, para.13. See also paras.14, 64.

9. The Comoros then expressly contrasted this observation with a specific sentence in the Report (which the Comoros has again highlighted in the Application),<sup>15</sup> concluding:

The Prosecutor has cited to no authority in support of *her refusal to consider the context of the criminal conduct*. There is no rule which says that the Prosecutor can only rely on evidence of what happened on the vessels—and nothing else—to establish jurisdiction. *If that were the case, the Prosecutor would be precluded from considering the wider occupation in which the events on the vessels took place in order to characterise the conduct on the vessels as being capable of being charged as war crimes*. Indeed, the Prosecutor is required to take into account all relevant facts to characterise the criminal conduct that is disclosed in the information provided to her.<sup>16</sup>

10. In the Response, it was necessary and reasonable for the Prosecution to address the claim that it had been inconsistent. Notwithstanding the specific sentence highlighted by the Comoros, the Prosecution explained that “the reasoning of the Report, when considered objectively, tends to reflect”<sup>17</sup> the principles that:

- “legal and factual analysis for the purpose of a preliminary examination should be confined, where feasible, to the territorial parameters of the Court’s jurisdiction”;<sup>18</sup> but that,
- “this is not an absolute rule”;<sup>19</sup> and that,

<sup>15</sup> See Application, para.10 (citing Report, para.137, “the Prosecution stated [...] that ‘the Office is not entitled to assess the gravity of the alleged crimes committed by the IDF on the *Mavi Marmara* in reference to other alleged crimes falling outside the scope of the referral and the jurisdiction of the ICC’”); Article 53(3) Application, para.62. See also Application, para.12, fn.13; Article 53(3) Application, para.70. The Comoros also made extensive legal submissions on the practice of “[n]ational and international courts” in considering “evidence beyond the jurisdiction”: see Article 53(3) Application, paras.71-75.

<sup>16</sup> Article 53(3) Application, para.67 (emphasis added).

<sup>17</sup> Response, para.53. *Contra* Application, para.11.

<sup>18</sup> Response, para.53.

<sup>19</sup> Response, para.53.

- “there may be aspects [...] where it is appropriate to consider extra-jurisdictional circumstances”, and that the Prosecution “does so when the facts of the situation show a rational link with those broader circumstances”.<sup>20</sup>

11. Thus, the Prosecution responded to the Comoros’ claim of an inconsistency with its view that there was no inconsistency at all. According to the Prosecution, the Report merely reflected the different conclusions flowing from the different *factual* considerations applicable to different aspects of the Prosecution’s analysis.

12. This “thrust and parry”<sup>21</sup> reflects no more than the ordinary dialogue of the litigation process. It represents no breach of the principle of *audi alteram partem*.<sup>22</sup> Indeed, when the full context of the litigation is taken into account, it is apparent that the Comoros’ claim that the Prosecution has “changed its position”, justifying its request to reply, itself depends on contradicting or disregarding the Comoros’ own previous arguments.<sup>23</sup>

13. Moreover, and in any event, the Comoros has already made the factual arguments which assume prominence on the basis of the clarification.<sup>24</sup> The vast majority of the Article 53(3) Application, and much of the Response, turn around the question *on the facts* of whether there is—in the Prosecution’s language—a rational link between the Identified Crimes and the circumstances beyond the Court’s

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<sup>20</sup> Response, para.53.

<sup>21</sup> See ICTY, *Prosecutor v. Gotovina and Marka*, IT-06-90-A, Decision on Prosecution’s Request for Leave to File Sur-Reply to Respond to False Allegations in Marka’s Reply Brief, 1 November 2011, p.1 (referring to “the thrust and parry of adversarial court proceedings”) (available at: <http://www.icty.org/x/cases/gotovina/acdec/en/111101.pdf>). See also ICC-01/13-4, para.7 (noting “the general adversarial practice of this Court (and other international courts and tribunals)”).

<sup>22</sup> *Contra* Application, para.13.

<sup>23</sup> *Contrast* Application, para.12 (“the OTP strictly applied its (own) rules *against any consideration* of the wider context throughout the [Report] [...] It can only be concluded that this was because the OTP did not envisage such a test at the time, and has since changed its position”, emphasis added), *with* Article 53(3) Application, para.13 (“The findings made by the Prosecutor in respect of the occupation and the blockade [...] are critical. They indicate that *the Prosecutor accepts that key factual and legal considerations that arise beyond* what occurred on board the vessels of the Flotilla (and the particular vessels that are registered to ICC States Parties including the Applicant) *are relevant*”, emphasis added).

<sup>24</sup> *Contrast* Response, paras.54-58, *generally with* Article 53(3) Application.

jurisdiction. It is not apparent what more the Comoros might now usefully add, which could be of assistance to the Pre-Trial Chamber.

*Leave to reply should not be granted for the Second Issue*

14. There is likewise nothing new in the Second Issue, which the Comoros describes as the argument in the Response that “the attacks on the civilians were not linked to the blockade or the armed hostilities, and were somehow ‘incidental’ to the context in which they occurred”.<sup>25</sup> For this reason, leave to reply is not justified, and further submissions in this respect will not assist the Pre-Trial Chamber.

15. The Comoros’ alleged “surpris[e]”<sup>26</sup> is based on an artificial and unreasonable construction of the Report. For example, the Comoros claims that the Prosecution “added substantially” to its view in the Report that, notwithstanding reason to believe the Identified Crimes had been committed, there was no reasonable basis to believe crimes under article 8(2)(b)(i) of the Statute (unlawful attacks on civilians) had been committed.<sup>27</sup> Yet the Comoros itself cites the paragraph in the Report reflecting both this conclusion and the Prosecution’s reasoning.<sup>28</sup>

16. Moreover, the Comoros again fails to take account of the fact that the Response in these respects directly addressed a core premise of the Comoros’ arguments in the Article 53(3) Application (its assumption that there was a material link between the Identified Crimes, the blockade, and the events in Gaza).<sup>29</sup> In the Response, the

<sup>25</sup> *Contra* Application, paras.15-17 (paraphrasing Prosecution arguments, citing Response, paras.32, 39, 45(ii)). See Response, paras.32, 36-37, 39, 45(ii), 56-57.

<sup>26</sup> See Application, para.17.

<sup>27</sup> Application, para.15. The Comoros continues: “The Prosecution *now* suggests—*never* before—that the reason that the attack on the civilian passengers was not unlawful is because they were not attacked ‘*for the purpose of enforcing the blockade*’, nor were those crimes ‘linked other than causally to the blockade’, and nor were they ‘closely linked to the conduct of hostilities by the IDF for the purpose of article 8(2)(b)(i)’” (emphasis supplied).

<sup>28</sup> See Report, para.99 (“none of the information available suggests that the intended object of the attack was the civilian passengers [...] Rather, viewed in the context of the interception operation, such an attack [...] appears to have been solely directed at the vessels”); see also below fn.33. Notwithstanding its reference to this conclusion in the Report, the Prosecution notes that the Comoros persistently refers to “the attacks on the civilians” in the Application.

<sup>29</sup> See e.g. Article 53(3) Application, para.79.



Prosecution rejected this premise, stating that it did not consider the Identified Crimes to be any more than causally connected to the blockade or that they were otherwise linked sufficiently to events in Gaza.<sup>30</sup> The available information did not suggest that the IDF intended the commission of the Identified Crimes as part of the operation to enforce the blockade. This assertion in the Response was grounded on five conclusions which were either expressly stated or, in one respect, necessarily implied, in the Report:

- there was a reasonable basis to believe that the *Mavi Marmara* and the *Eleftheri Mesogios* or *Sofia*, as vessels attempting to breach the blockade, were made the object of attacks by the IDF;<sup>31</sup>
- a boarding operation in principle enables distinction between the various persons aboard the vessels, and between the persons and the vessels themselves;<sup>32</sup>
- while finding a reasonable basis to believe that violent crimes were committed against individual civilian passengers aboard the *Mavi Marmara* (the Identified Crimes), the Prosecution did not find a reasonable basis to believe that the offence of attacking individual civilians (in the sense of article 8(2)(b)(i) of the Statute) was established;<sup>33</sup>
- while finding a reasonable basis to believe that war crimes were committed (the Identified Crimes), requiring a nexus with an armed conflict, the Prosecution did not find a reasonable basis to believe that crimes against

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<sup>30</sup> See Response, para.56.

<sup>31</sup> See Response, para.36 (citing Report, paras.92-94).

<sup>32</sup> See Response, para.37. See generally Report, paras.40-42, 53-54, 78, 93-94, 98, 105-107 (discussing the circumstances in which the attacks were carried out).

<sup>33</sup> See Response, paras.32, 36-37, 39-40 (citing *inter alia* Report, para.99).

humanity were committed, requiring a nexus with a widespread or systematic attack directed against a civilian population;<sup>34</sup>

- nothing in the Prosecution's analysis, or the information available to it, suggested that the Identified Crimes were otherwise sufficiently linked to events in Gaza, taking into account the fact that the Identified Crimes did not appear to have been committed in a systematic fashion across the flotilla; that the victims, while opposed to the IDF, were not affiliated to Hamas; and that the Identified Crimes did not appear to have a significant impact on the civilian population in Gaza.<sup>35</sup>

17. The Comoros cannot reasonably claim either that it was unforeseeable that the Prosecution would dispute the core premise of its arguments, or that it was surprised by the Prosecution's reference to those parts of the Report which undermine that premise.<sup>36</sup> Nor, as discussed further below,<sup>37</sup> is the Comoros' view that the relevant determinations in the Report were "a final conclusion requiring no investigation" an appropriate or relevant matter for the Application.<sup>38</sup>

18. Furthermore, not only did the Comoros have ample opportunity to address in the Article 53(3) Application each of the points relied upon by the Prosecution concerning the Second Issue, in fact it did so in a number of respects.<sup>39</sup> It does not require a second opportunity to do so, nor is one justified.

<sup>34</sup> See Response, para.56 (citing Report, para.130).

<sup>35</sup> See Response, para.57 (citing Report, paras.13, 51, 54, 140-141, 146).

<sup>36</sup> *Contra* Application, paras.9, 14-15, 17. Whether or not those parts of the Report amount to "only a few paragraphs" is immaterial: *contra* Application, para.14.

<sup>37</sup> See below para.21.

<sup>38</sup> *Contra* Application, para.17.

<sup>39</sup> See e.g. Article 53(3) Application, paras.80 (concerning the approach to crimes against humanity), 106 (criticising the Prosecution's approach to the analysis under article 8(2)(b)(i) of the Statute), 125-128 (asserting that the population of Gaza was impacted).

*Leave to reply should not be granted for the Third Issue*

19. The Third Issue proposed by the Comoros—its subjective view that “the Prosecution’s submissions on the applicable standard of review [...] are not clear and, in their present form, are unhelpful”<sup>40</sup>—represents no more than the (limited) disagreement between the Parties on a matter of law. The Pre-Trial Chamber is now seised of the views both of the Comoros and the Prosecution on this legal question.<sup>41</sup> It needs no further assistance. The fact that this is the first occasion on which a review under article 53(3) of the Statute has been conducted does not itself justify any departure from the ordinary procedures of this Court, or show good cause for granting leave to reply. There is a necessary limit to the number of rounds of “relevant” submissions which can be filed.<sup>42</sup>

*Leave to reply should not be granted for the Fourth Issue*

20. The logic of the matters raised in the Fourth Issue—contending variously, for example, that the Prosecution has “misinterpreted central arguments of the Comoros”<sup>43</sup> and that “[t]he OTP, by acting as it has done in the present situation, has—improperly—made final conclusions, however disguised, about facts”<sup>44</sup>—is obscure and hard to follow. These submissions appear to show that the Comoros takes the view that there is good cause for a reply *whenever* the moving party, subjectively, considers that the respondent differs in its perspective on the issues or facts of the proceedings. This is incorrect. It is apparent from the Comoros’ submissions on the Fourth Issue that it wishes simply to respond to the Response on the merits of all the issues now before the Pre-Trial Chamber.<sup>45</sup> This does not constitute good cause, and should be dismissed.

<sup>40</sup> Application, para.18. *See also* paras.19-20.

<sup>41</sup> *See* Article 53(3) Application, paras.48-59; Response, paras.13-16.

<sup>42</sup> *Contra* Application, para.21 (“all relevant submissions should thus be filed for the Chamber’s consideration”).

<sup>43</sup> Application, p.10, sub-title iii.

<sup>44</sup> Application, para.25.

<sup>45</sup> *See e.g.* Application, para.24 (“The Applicant seeks leave to reply to show that on this and other key issues the Prosecution has effectively decided not to investigate the case because there is conflicting evidence of which it

21. The Prosecution further notes that the Application, especially in the context of the Fourth Issue, makes submissions to the Pre-Trial Chamber on substantive issues relevant to these proceedings. This is demonstrated, for example, by the assertions that the Prosecution has “improperly [...] made final conclusions [...] about facts” and that “contested issues of fact [...] need to be investigated”.<sup>46</sup> Placing substantive arguments in an application seeking leave to reply is not an appropriate practice, and the Prosecution will not address these arguments in detail. In general, however, the Prosecution recalls its position in the Response that its adherence to the requirements of article 53 of the Statute—requiring it to be satisfied of a “reasonable basis to proceed”—does not amount to any abdication of its investigative duty.<sup>47</sup>

*Leave to reply should not be granted for the Fifth Issue*

22. The request for leave to reply on the Fifth Issue should be dismissed *in limine*. The Comoros fails to show any inaccuracy in the Prosecution’s observations, and takes them out of context.<sup>48</sup> At no point did the Prosecution purport to have expressly “identif[ied]” in the Report “a single potential perpetrator or category of perpetrators, even in general terms”.<sup>49</sup> Instead, it merely referred to passages of the Report which, in the Prosecution’s view, demonstrate that it had not erred in the fashion alleged by Comoros.

23. In the Response, the Prosecution stated:

The Comoros incorrectly asserts that the Prosecution failed to consider the potential perpetrators of the apparent war crimes. To the contrary, the Report

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seems afraid (or differing views on the evidence) [...] The Reply should also be permitted so that the Applicant can highlight that the role of the diligent and skilful prosecutor is to examine what may appear to be difficult evidence and to explore where it leads”).

<sup>46</sup> Application, paras.25, 27. *See also* para.24 (“it is precisely these circumstances—of having different accounts—that require an investigation to be opened”).

<sup>47</sup> *See e.g.* Response, paras.27, 81-83.

<sup>48</sup> *Contra* Application, paras.28-29.

<sup>49</sup> *Contra* Application, para.29.

shows that the Prosecution expressly considered *key indicators in this regard* in its gravity analysis [...] *These factors suggested* that the potential perpetrators of the Identified Crimes were among those who carried out the boarding of the *Mavi Marmara*, and subsequent operations aboard, but not necessarily other persons further up the chain of command.<sup>50</sup>

24. In addition, the Response notes that, “[a]s the Report shows, the Prosecution’s analysis *did not support the view* that there was a reasonable basis to believe that ‘senior IDF commanders and Israeli leaders’ were responsible as perpetrators or planners of the apparent war crimes.”<sup>51</sup>

25. Moreover, these references to “indicators” or “factors” in the Report relevant to the question raised by the Comoros<sup>52</sup>—whether adequate consideration had been given to potential perpetrators of the Identified Crimes<sup>53</sup>—do not constitute “submissions that never appeared in the original [Report]”.<sup>54</sup> For this reason, the Comoros was fully able to address these aspects of the Prosecution’s reasoning. Granting leave to reply on this issue will not assist the Pre-Trial Chamber further.

#### *Leave to reply should not be granted for the Sixth Issue*

26. The request for leave to reply on the Sixth Issue should be dismissed *in limine*. The Comoros fails to show any inaccuracy in the Prosecution’s observations in this respect.<sup>55</sup> Nor, in any event, does it show how further ventilation of this issue would assist the Pre-Trial Chamber, or that the issue is material to the alleged errors in the Report.

<sup>50</sup> Response, para.60 (emphasis added). The “key indicators” considered in the Report were: “the available information did not suggest that the Identified Crimes were systematic or resulted from a deliberate plan or policy, having regard especially to the commission of the Identified Crimes on just one of the seven vessels of the flotilla and the manner in which those crimes were committed.”

<sup>51</sup> Response, para.62 (emphasis added).

<sup>52</sup> See above fn.50.

<sup>53</sup> See Article 53(3) Application, paras.85-88.

<sup>54</sup> *Contra* Application, para.29.

<sup>55</sup> *Contra* Application, paras.28, 30.

27. The Comoros mischaracterises the Response in asserting that leave to reply should be granted for the Sixth Issue so that it can show:

- that “the Prosecution was in fact informed” of “over 230 victim applications [...] filed with VPRS”;
- that the Comoros advised the Prosecution that those applications “should be obtained” from VPRS or the Comoros; and that
- “the Prosecution was provided with victim applications by IHH on 19 August 2014”, and that the Comoros thereafter “confirmed to the Prosecution that these materials contained victim applications previously submitted to the VPRS by IHH.”<sup>56</sup>

28. None of these contentions is in dispute.

29. In the Response, the Prosecution stated only that, to the best of its knowledge, “it does not have *in its possession* ‘over 230 victim applications that have been filed with VPRS’”.<sup>57</sup> As the Prosecution acknowledged, it had received materials from the Comoros (amounting to 56 statements and other materials, plus summaries or excerpts from other statements), and from IHH (amounting to a book containing interviews with 39 persons and 13 individual statements).<sup>58</sup> The Prosecution cannot see how these materials amount to more than “230 victim applications”. For this reason, it stated that it is not in a position to “confirm” whether these materials “replicate the victim applications in whole or part.”<sup>59</sup> This is correct.

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<sup>56</sup> *Contra* Application, para.30.

<sup>57</sup> Response, para.22 (emphasis added).

<sup>58</sup> Response, para.22, fn.49.

<sup>59</sup> Response, para.22, fn.49.

30. As the Prosecution has previously advised representatives of the Comoros,<sup>60</sup> the Prosecution does not have any power to inspect materials held by VPRS unless they are transmitted to a Chamber of the Court in a filing of which the Prosecution is notified.

### Conclusion

31. For these reasons, the Application should be dismissed. In the event any reply is authorised, it should be filed by 30 April 2015, and should be subject to an appropriate page limit determined by the Pre-Trial Chamber, in any event not exceeding 20 pages.



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Fatou Bensouda, Prosecutor

Dated this 17<sup>th</sup> day of April 2015

At The Hague, The Netherlands

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<sup>60</sup> Response, para.22, fn.49.