

Public
Annex E

**Procedural history—
further information received since 6 November 2014**

1. In the course of the litigation before the Pre-Trial Chamber, the Comoros repeatedly claimed that the Prosecution had in its possession, or had access to, the contents of applications filed with the Victim Participation and Reparations Section of the Registry of the Court (VPRS).¹ The Prosecution repeatedly stated that this was not the case.²

2. In addition, during the litigation, both the Comoros and the victims represented by independent counsel referred to or quoted statements which were not in the Prosecution's possession.³ In so doing, the Comoros and/or victims represented by independent counsel made new factual allegations which were previously unknown to the Prosecution.⁴

3. Soon after the Appeals Chamber's decision of 6 November 2015 declining to exercise jurisdiction over the Prosecution's appeal against the Request,⁵ representatives of the Prosecution met with representatives of the Comoros.

4. On 28 January 2016, the Comoros wrote to the Prosecution with "further new evidence", relevant "in particular [to] the issue of gravity".⁶ It suggested that this information, together with the information already in the Prosecution's possession, "very clearly demonstrate the magnitude and gravity of the present Situation".⁷ This new information included:

- new statements by certain persons;

¹ See e.g. [Request for Review](#), para. 91.

² See e.g. [Prosecution Response to Comoros](#), para. 22 ; [Prosecution Response to Victims](#), para. 42.

³ In some cases, these statements are still not in the Prosecution's possession, including those of V16, V70, V76, V89, V95, V97, V105, V134, V161, V176, V210, V216, V223, V253, V259, V261, V271, V300, V302, V315, V334, V336, and V339.

⁴ See e.g. [Prosecution Response to Comoros](#), para. 82 (fn. 186); [Prosecution Response to Victims](#), paras. 131, 135-136, 142-144, 149, 155.

⁵ See [Appeals Chamber Decision](#) ; [Request](#).

⁶ Letter of 28 January 2016.

⁷ Letter of 28 January 2016.

- extracts or quotations of statements made by senior Israeli officials; illustrative material depicting the Comoros' view of the "trajectories and directions of the firing of bullets in respect of the 10 deceased victims";
- a summary of statements already in the Prosecution's possession "concerning the shooting of live ammunition from the helicopters";
- various photographs of the *Mavi Marmara* and copies of additional reports prepared by the Turkish authorities in the course of their investigation (of which some were already, in whole or in part, in the Prosecution's possession); and
- personal observations by certain victims "in response" to the Prosecution's "specific findings on gravity".

5. Additionally, in a list of evidence purportedly "already submitted to the ICC OTP", the Comoros again referred to "ICC victim applications" which had been "submitted to VPRS" –and, for the first time, provided a list of 342 names in this respect. Notwithstanding the repeated Prosecution's assertions before the Pre-Trial Chamber, the Comoros stated: "The OTP have not confirmed whether they requested and received these applications and the accompanying statements. They can be provided to the OTP immediately for consideration if the OTP do not have them."

6. Finally, the Comoros promised that "another (much smaller) batch of new materials" would "very shortly" be provided.⁸

7. On 31 March 2016, the Comoros wrote a further 8-page letter to the Prosecution. This letter mixed factual assertions, which it implied to result from an

⁸ Letter of 28 January 2016.

unknown number of “recently conducted witness interviews” with unidentified persons, with submissions as to the Comoros’ view of the proper outcome of the Prosecutor’s review.⁹ This letter included eight specific factual claims.

8. On 14 April 2016, the Prosecutor wrote to counsel for the Comoros in respect of the 342 victim applications mentioned in the letter of 28 January 2016, inviting their submission as soon as possible.¹⁰

9. On 29 April 2016, the Comoros notified the Prosecution by e-mail that it was in a position to submit the victim applications currently in its possession, and that these would shortly be delivered. The Comoros undertook to provide “[t]he balance of these applications and new applications that have been filed” by “no later than the middle of May”, but noted that it was only in a position to provide applications regarding victims represented by independent counsel.¹¹

10. On 18 May 2016, the Prosecution wrote to the Office of Public Counsel for Victims (OPCV) to request access to the applications of victims not represented by independent counsel.¹² OPCV confirmed receipt of the letter on 19 May 2016, and undertook to consult with their clients.¹³

⁹ Letter of 31 March 2016 (*e.g.* “We draw your attention to (i) the summaries of the latest witness evidence as set out below, and (ii) the considerations on the evidence as a whole as now revealed which are identified thereafter”).

¹⁰ Letter of 14 April 2016 (noting that the Prosecution “neither possesses these applications, which are held exclusively by VPRS, nor is empowered to access them” and reporting that, “[a]t our request, VPRS has reconfirmed to us that they cannot disclose such material in the absence of an order from a Chamber of the Court or upon request by the victims themselves”).

¹¹ E-mail of 29 April 2016. The Prosecution subsequently determined that this first submission contained 216 victim applications, not the 217 victim applications referred to in the Comoros’ subsequent letters of 8 June 2016 and 31 August 2016.

¹² Letter of 18 May 2016. The Prosecution and OPCV had also exchanged e-mails on 12 May 2016.

¹³ E-mail of 19 May 2016.

11. On 8 June 2016, the Comoros informed the Prosecution that it had submitted a further 10 victim applications, and briefly highlighted the relevance in its view of the accounts of some named victims for specific factual allegations.¹⁴
12. On 4 July 2016, the Comoros informed the Prosecution that it had submitted a further 10 victim applications.¹⁵
13. On 21 July 2016, the Comoros informed the Prosecution that it had submitted a further 28 victim applications.¹⁶
14. On 1 August 2016, OPCV informed the Prosecution of “difficulties” in contacting the victims represented by OPCV, and undertook to confirm the position “by the end of August”.¹⁷
15. On 5 August 2016, the Prosecutor wrote to counsel for the Comoros, affirming that it had still not received all of the 342 applications originally offered,¹⁸ and setting a final deadline for any further applications.¹⁹
16. On 31 August 2016, the Comoros informed the Prosecution that it had submitted a further 42 victim applications, and clarified that “as with some of our previous letters,” some of these applications are “recent and updated”. The Comoros further stated that it had been unable “to consult with the remaining 35 victims about the submission of their applications”, but would endeavour to send any further applications “as soon as possible”.²⁰ In an annex to its letter, the Comoros highlighted its view of the relevance of victims’ reports of the “forcible use

¹⁴ Letter of 8 June 2016.

¹⁵ Letter of 4 July 2016. On examination of these materials, the Prosecution discovered that they contained the statements of more than 10 relevant persons.

¹⁶ Letter of 21 July 2016.

¹⁷ E-mail of 1 August 2016.

¹⁸ By the Comoros’ count, it had submitted 265 applications at this point. *See above* fn. 11.

¹⁹ Letter of 5 August 2016 (stressing that, “[a]lthough we will of course continue to treat any material received after that point in accordance with the requirements of the Statute, it is necessary to set this practical deadline in the interest of the fair and efficient preparation of my final decision.”).

²⁰ Letter of 31 August 2016.

of prolonged stress positions”, and emphasised certain victims’ accounts in this respect.

17. In a further letter of 31 August 2016, the Comoros provided the Prosecution with a “military report” prepared by a retired military officer from a state in western Europe which is not concerned in the relevant events. The Comoros referred to its letter of 8 June 2016, and further highlighted the relevance in its view of the accounts of some named victims to certain factual allegations.²¹

18. On 1 September 2016, OPCV undertook to communicate any relevant applications on behalf of the victims it represented by 12 September 2016.²² On 26 September 2016, OPCV further informed the Prosecution of continued difficulties contacting their clients, and undertook to provide relevant applications on a redacted basis.²³

19. On 4 October 2016, the Prosecution received from OPCV 80 applications for participating victim status, with all identifying information redacted.²⁴

20. In an e-mail of 27 January 2017, the Comoros provided the Prosecution with a “very important forensic report by a leading UK pathologist”.²⁵ Although this report appears to have been commissioned at least as early as 18 April 2016, the Prosecution had not received prior notice of the Comoros’ intention to provide this material. Although the report largely appears to rely on material already in the Prosecution’s possession, some material—such as the material used as a basis for consultation with a named “ballistics expert”—does not seem to have been provided.

²¹ Second letter of 31 August 2016.

²² E-mail of 1 September 2016.

²³ Telephone call of 26 September 2016.

²⁴ Letter of 29 September 2016; e-mail of 4 October 2016.

²⁵ E-mail of 27 January 2017.