

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-01/13**  
Date: **30 July 2015**

**THE APPEALS CHAMBER**

**Before:**  
Judge Sanji Mmasenono Monageng  
Judge Silvia Fernández de Gurmendi  
Judge Christine Van Den Wyngaert  
Judge Howard Morrison  
Judge Piotr Hofmański

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

**Public**

**Prosecution's request to instruct Parties and participants to refrain from  
commenting on the merits of this case in the media and comply with the Code of  
Professional Conduct for counsel**

**Source:** Office of the Prosecutor

**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

Mr James Stewart

Ms Helen Brady

**Counsel for the Defence**

**Legal Representatives of Victims**

Mr Geoffrey Nice

Mr Rodney Dixon

Ms Paolina Massidda

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for Victims**

Ms Paolina Massidda

Mr Enrique Carnero Rojo

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

**States Representatives**

Mr Geoffrey Nice

Mr Rodney Dixon

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section Other**

## Submissions

1. The Prosecution notes certain statements reportedly made by Mr Geoffrey Nice, Counsel for both the victims and Government of Comoros, to a media outlet regarding the Prosecution's notice of appeal filed on Monday, 27 July 2015.<sup>1</sup>
  
2. From the reported statements, it appears that Counsel commented on the admissibility of the appeal, which is a live issue before this Court, and used derogatory terms to refer to the Prosecution's notice. In particular, Mr Nice is quoted to have said that "the arguments Chief Prosecutor Fatou Bensouda has put forward are 'complete hogwash'" and that "her claims are 'absolute rubbish'". He is also quoted as saying that "Bensouda's appeal is 'a last ditch attempt to do what would be expected of her by the US and supporters of Israel'" and "[w]ill such cases be handled according to the 'rule of law,' [...] or will victims witness 'officials of the highest rank seeming yet again to bend the knee to the interests of Israel and the US?'"
  
3. These statements are inappropriate for Counsel acting before this Court. Not only do comments of this nature prejudice the public understanding of these proceedings and can bring the Office of the Prosecutor and the Court as a whole into disrepute;<sup>2</sup> they are also contrary to the high standards of conduct expected from

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<sup>1</sup> *Milosevic prosecutor claims top ICC official bowing to Israeli, US pressure*, Electronic Entifada, 28 July 2015: <https://electronicintifada.net/blogs/ali-abunimah/milosevic-prosecutor-claims-top-icc-official-bowing-israeli-us-pressure> . See also: *Top ICC Official Bowing to Israeli, US pressure: Lead Counsel for Victims of Israeli Attack on the Mavi Marmara*, Global Research Center for Research on Globalization, 28 July 2015: <http://www.globalresearch.ca/top-icc-official-bowing-to-israeli-us-pressure-lead-counsel-for-victims-of-israeli-attack-on-the-mavi-marmara/5465507>. (Last accessed on 30 July 2015).

<sup>2</sup> Decision on the press interview with Ms Le Fraper du Hellen (ICC-01/04-01/06-2433), para.41. Although the following statement was made with respect to a Prosecution's representative, the Prosecution submits that equally applies to all Parties and participants acting before this Court.

counsel appearing before this Court.<sup>3</sup>

4. Parties and participants must refrain from commenting on the merits of an ongoing case in the press. Litigation needs to be done in the courtroom and not in the media.<sup>4</sup> Moreover, given the high profile cases before this Court, and the sensitive nature of the facts underlying this appeal, Parties and participants should exercise caution and ensure the accuracy of their remarks in making any public statement.<sup>5</sup> Indeed, the public needs to be able to trust the published statements of those involved in the case.<sup>6</sup> Further, while vigorous advocacy is inherent to the Court proceedings, counsel are required to maintain high standards of professional conduct.<sup>7</sup> Articles 7 and 24(1) of the Code of Professional Conduct for counsel so require.<sup>8</sup> The use of unsupported and derogatory comments about the opposing party is incompatible with these provisions.

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<sup>3</sup> Article 7 Code of Professional Conduct for counsel. See also article 24(1).

<sup>4</sup> ICC-01/09-01/11-T-51-Red2-ENG, p.12, lns.17-20; ICC-01/09-01/11-T-59-Red-ENG, p.25, lns.7-23.

<sup>5</sup> Decision on the Request for Disqualification of the Prosecutor (ICC-01/11-01/11-175 OA3), para.30.

<sup>6</sup> ICC-01/04-01/06-2433, para.39.

<sup>7</sup> *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, available at <http://www.icty.org/x/cases/gotovina/acdec/en/111101.pdf>.

<sup>8</sup> Article 7(1), in particular, requires that "Counsel shall be respectful and courteous in his or her relations with the Chamber, the Prosecutor and the members of the Office of the Prosecutor, the Registrar and the members of the Registry, the client, opposing counsel, accused persons, victims, witnesses and any other person involved in the proceedings." Article 24(1) requires that "Counsel shall take all necessary steps to ensure that his or her actions or those of counsel's assistants or staff are not prejudicial to the ongoing proceedings and do not bring the court into disrepute".

## Relief Sought

5. The Prosecution requests the Appeals Chamber to instruct Parties and participants to refrain from commenting on the merits of the case outside the courtroom and abide by the expected standards of professional conduct required by the Code of Professional Conduct for counsel.

Word count: 890<sup>9</sup>



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Fatou Bensouda, Prosecutor

Dated this 30<sup>th</sup> day of July 2015

At The Hague, The Netherlands

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<sup>9</sup> The Prosecution hereby makes the required certification: ICC-01/11-01/11-565 OA6, para.32.