



**Original: English**

**No. ICC-01/13 OA  
Date: 6 August 2015**

**THE APPEALS CHAMBER**

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

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

**Public document**

**Decision on suspensive effect**

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

**The Office of the Prosecutor**

Ms Fatou Bensouda, Prosecutor

Ms Helen Brady

**Legal Representatives of Victims**

Mr Geoffrey Nice

Mr Rodney Dixon

**The Office of Public Counsel for victims**

Ms Paolina Massidda

Mr Enrique Carnero Rojo

**States Representatives**

Mr Geoffrey Nice

Mr Rodney Dixon

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

The Appeals Chamber of the International Criminal Court,

In the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled “Decision on the request of the Union of the Comoros to review the Prosecutor’s decision not to initiate an investigation” of 16 July 2015 (ICC-01/13-34),

Having before it the Prosecutor’s “Notice of Appeal of ‘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)” of 27 July 2015 (ICC-01/13-35),

*Issues* the following

## DECISION

The Appeals Chamber suspends the effect of Pre-Trial Chamber I’s “Decision on the request of the Union of the Comoros to review the Prosecutor’s decision not to initiate an investigation”.

## REASONS

### I. PROCEDURAL HISTORY

1. On 6 November 2014, the Prosecutor announced her determination that there was no reasonable basis to proceed with an investigation into the situation referred to the Court by the Union of the Comoros on 14 May 2013<sup>1</sup> (hereinafter: “Decision not to Investigate”).

2. On 16 July 2015, Pre-Trial Chamber I rendered the “Decision on the request of the Union of the Comoros to review the Prosecutor’s decision not to initiate an investigation”<sup>2</sup> (hereinafter: “Impugned Decision”), requesting the Prosecutor to reconsider her Decision not to Investigate.

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<sup>1</sup> Annex A to “Notice of filing the report prepared by the Office of the Prosecutor pursuant to article 53(1) of the Rome Statute”, dated 6 November 2014 and filed on 4 February 2015, ICC-01/13-6-AnxA.

<sup>2</sup> ICC-01/13-34.

3. On 27 July 2015, the Prosecutor filed the “Notice of Appeal of ‘Decision on the request of the Union of the Comoros to review the Prosecutor’s decision not to initiate an investigation’”<sup>3</sup> (hereinafter: “Notice of Appeal”).

## II. MERITS

4. In the Notice of Appeal, the Prosecutor indicates that, given the “broad scope of the errors” that she has identified in the Impugned Decision, she “does not consider it ‘possible’ to” reconsider her decision not to initiate an investigation in accordance with article 53 (3) of the Statute and rule 108 (2) of the Rules of Procedure and Evidence until the appeal is decided.<sup>4</sup> The Prosecutor states that she “does not consider it necessary to seek suspensive effect of the [Impugned] Decision under article 82(3) of the Statute”.<sup>5</sup> In the alternative, the Prosecutor “requests suspensive effect in light of the specific circumstances of the situation”, arguing that “commencing a process of reconsideration in the context of the law and reasoning in the [Impugned] Decision would defeat the purpose of this appeal, which contends that, but for the errors in the [Impugned] Decision, no request for consideration would have been made”.<sup>6</sup>

5. The Appeals Chamber notes that article 82 (3) of the Statute provides that “[a]n appeal shall not of itself have suspensive effect unless the Appeals Chamber so orders, upon request, in accordance with the Rules of Procedure and Evidence”. Rule 156 of the Rules of Procedure and Evidence provides that “[w]hen filing the appeal, the party appealing may request that the appeal have suspensive effect in accordance with article 82, paragraph 3”.

6. With regard to the Prosecutor’s submissions that it is not possible to reconsider her Decision not to Investigate and that it is not necessary to request suspensive effect under article 82 (3) of the Statute, the Appeals Chamber notes that the effect of a judicial decision may be suspended pending the outcome of an appeal only if the Appeals Chamber so orders upon request. Until such time, the effect of any judicial decision remains valid and binding upon the parties. The Appeals Chamber will, therefore, address the Prosecutor’s alternative request for suspensive effect.

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<sup>3</sup> ICC-01/13-35.

<sup>4</sup> Notice of Appeal, para. 29.

<sup>5</sup> Notice of Appeal, para. 29.

<sup>6</sup> Notice of Appeal, para. 30.

7. The Appeals Chamber recalls that it has consistently held that its decision to order that an appeal has suspensive effect is discretionary and that, when examining a request for suspensive effect, it “will consider the specific circumstances of the case and the factors it considers relevant for the exercise of its discretion under these circumstances”.<sup>7</sup> The Appeals Chamber has summarised the circumstances in which it has previously exercised its discretion to grant suspensive effect as follows:

In past decisions, the Appeals Chamber, when deciding on requests for suspensive effect, has considered whether the implementation of the decision under appeal (i) “would create an irreversible situation that could not be corrected, even if the Appeals Chamber eventually were to find in favour of the appellant”, (ii) would lead to consequences that “would be very difficult to correct and may be irreversible”, or (iii) “could potentially defeat the purpose of the appeal”.<sup>8</sup> [Footnotes omitted.]

8. Without prejudice to the Appeals Chamber’s eventual determination on the admissibility of the present appeal and, if found to be admissible, the merits of the appeal, the Appeals Chamber finds the Prosecutor’s arguments on suspensive effect to be persuasive. In particular, it finds that it would defeat the purpose of the present appeal if the Prosecutor were to reconsider her Decision not to Investigate before the issues arising therein are determined.

Done in both English and French, the English version being authoritative.



**Judge Christine Van den Wyngaert**  
**Presiding Judge**

Dated this 6th day of August 2015

At The Hague, The Netherlands

<sup>7</sup> *Prosecutor v. Jean Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean Jacques Magenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, “Decision on the Prosecutor’s urgent request for suspensive effect of the ‘Decision ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido’ of 21 October 2014”, 22 October 2014, ICC-01/05-01/13-718 (OA 9), para. 5.

<sup>8</sup> *Ibid.*, See also *Prosecutor v. Jean-Pierre Bemba Gombo*, “Decision on the Request of Mr Bemba to Give Suspensive Effect to the Appeal Against the ‘Decision on the Admissibility and Abuse of Process Challenges’”, 9 July 2010, ICC-01/05-01/08-817 (OA 3), para. 11.