

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/23**

Date: **14 October 2024**

PRE-TRIAL CHAMBER I

Before: Judge Iulia Motoc, Presiding Judge
Judge María del Socorro Flores Liera
Judge Reine Alapini-Gansou

**SITUATION IN
THE DEMOCRATIC REPUBLIC OF THE CONGO II**

**PUBLIC
with Confidential Annexes A and B**

**Public redacted version of “Notification concerning the Prosecution's determination
with respect to the referral of the Democratic Republic of the Congo dated
23 May 2023”, 14 October 2024, ICC-01/23-4-Conf**

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

Karim A. A. Khan, KC
Mame Mandiaye Niang
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Counsel for the Defence

Legal Representatives of the Victims

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**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

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REGISTRY

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Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. Further to its notification to the Presidency of 5 June 2023, the Prosecution hereby informs Pre-Trial Chamber I of the outcome of its preliminary examination into the Situation in the Democratic Republic of the Congo II, following the receipt on 23 May 2023 of a second referral from the Government of the Democratic Republic of the Congo (“DRC”) with respect to alleged crimes committed in North Kivu Province of the DRC, since 1 January 2022.
2. Having evaluated the information available, the Prosecution has concluded that any alleged Rome Statute crimes committed in North Kivu since 1 January 2022 would fall within the parameters of, and are in any event sufficiently linked to, the situation under investigation resulting from the DRC’s referral of March 2004. In light of this, the Prosecution does not consider it necessary to open a *new* investigation. Rather, it will investigate alleged crimes committed in North Kivu since 1 January 2022 within the existing situation in the Democratic Republic of the Congo (“DRC Situation”).

Confidentiality

3. This document and its annexes are filed confidentially under regulation 23*bis* of the Regulations of the Court because they refer to [REDACTED]. The Prosecution is filing a public redacted version of this document simultaneously..

A. Background

4. On 5 June 2023, the Prosecutor notified the Presidency that on 23 May 2023 he received a referral under article 14(1) of the Statute from the DRC Government.¹ The referral requests the initiation of an investigation into alleged crimes committed in North Kivu Province of DRC since 1 January 2022.² This is the second referral by the DRC Government concerning alleged crimes committed on its territory. The first referral, submitted on 3 March 2004, encompassed alleged Rome Statute crimes committed in the entire territory of the DRC since 1 July 2002.³

¹ Notification, [ICC-01/23-1-Anx-I](#).

² Notification, [ICC-01/23-1-Anx-I](#), p. 2. The authorities subsequently clarified that the second DRC referral was temporally open-ended. See Annex B, Letter from Minister of Justice, Madame Rose Mutombo Kiese to Deputy Prosecutor Niang, 28 February 2024, p.3.

³ *Mbarushimana* Jurisdiction Decision, [ICC-01/04-01/10-451](#), para.26; [DRC-OTP-0098-0169](#).

5. The Prosecution's investigation in the Situation in the DRC remains ongoing alongside its support to domestic accountability efforts. This two-track approach is reflected in the Memorandum of Understanding ("MoU") concluded on 1 June 2023 between the Prosecutor and DRC authorities,⁴ based on the first DRC referral.⁵

B. The events described in the second referral fall within the parameters of the DRC

Situation

6. As anticipated in its Notification to the Presidency,⁶ the Prosecution has assessed whether the events in North Kivu since 1 January 2022 described in the second DRC referral fall within the parameters of and/or are sufficiently linked to the situation under investigation resulting from the first DRC referral. This is relevant to the determination whether the Prosecution must open a new investigation concerning a different situation or whether the events described in the second DRC referral can be assessed within the ongoing investigation in the pre-existing DRC Situation.
7. The Prosecution has concluded that any alleged Rome Statute crimes committed in North Kivu since 1 January 2022 would fall within the parameters of, and are in any event sufficiently linked to, the situation referred on 3 March 2004.⁷ In reaching this conclusion, the

⁴ ICC-OTP, Press Release, [The Prosecutor of the International Criminal Court, Karim A.A. Khan KC, concludes his first visit to the Democratic Republic of the Congo with the signing of a new Memorandum of Understanding, renewing cooperation towards justice in the DRC](#), 6 June 2023; [Mémorandum d'entente entre la République Démocratique du Congo et le Bureau du Procureur de la Cour Pénale Internationale](#), 1 June 2023. See also, in relation to the implementation of the MoU, ICC-OTP, Press Release, [The Deputy Prosecutor of the International Criminal Court, Mame Mandiaye Niang, concludes his visit to the Democratic Republic of the Congo on the occasion of the roundtable on the status of the handling of priority cases by Congolese judicial authorities](#), 21 November 2023.

⁵ Article 3, [Mémorandum d'entente entre la République Démocratique du Congo et le Bureau du Procureur de la Cour Pénale Internationale](#), 1 June 2023.

⁶ [ICC-01/23-1-Anx-I](#), p. 2. See also [Statement of the Prosecutor of the International Criminal Court, Karim A.A. Khan KC, on the referral by the Democratic Republic of the Congo regarding the situation in its territory](#), 15 June 2023. As noted in the Notification, the Prosecution was not able to make an immediate determination at the time of receiving the second DRC referral whether the referral related to an ongoing situation or to a new situation. It thus erred on the side of caution, while notifying the Presidency that the Office would assess "as a preliminary matter, whether the scope of the two situations referred by the DRC Government are sufficiently linked to constitute a single situation.

⁷ [REDACTED].

Prosecution has considered: (a) the contextual elements of war crimes;⁸ (b) the actors/groups allegedly involved;⁹ and (c) the types and pattern of crimes committed and groups of victims.¹⁰

C. Conclusion

8. Considering that the events in North Kivu since January 2022 described in the second DRC referral fall within the parameters of, and are in any event sufficiently linked to, the parameters of the DRC Situation, there is no further requirement to “initiate an investigation” within the meaning of article 53(1). An investigation was initiated pursuant to articles 13(a) and 53(1) as a result of the first DRC referral.¹¹ It is therefore within the scope of this existing situation that the Prosecution will investigate alleged Rome Statute crimes committed in North Kivu since 1 January 2022.¹²
9. [REDACTED]
10. A press statement is scheduled for release on the outcome of the preliminary examination.



Karim A. A. Khan KC, Prosecutor

Dated this 14th day of October 2024
At The Hague, the Netherlands

⁸ This assessment has been guided by the Court’s jurisprudence: see e.g. *Mbarushimana* Article 58 Decision, [ICC-01/04/01/10-1](#), paras. 6-7; *Mbarushimana* Jurisdiction Decision, [ICC-01/04-01/10-451](#), para. 16; *Côte d’Ivoire* Article 15 Decision, [ICC-02/11-14-Corr](#), paras. 178-179; *Côte d’Ivoire* Decision on further information, [ICC-02/11-36](#), paras. 14, 36; *Mudacumura* Article 58 Decision, [ICC-01/04-01/12-Red](#), paras. 14, 16; *Georgia* Article 15 Decision, [ICC-01/15-12](#), para. 64; *Al-Werfalli* First Arrest Warrant, [ICC-01/11-01/17-2](#), para. 23; *Burundi* Article 15 decision, [ICC-01/17-9-Red](#), paras. 191-194; *Al-Werfalli* Second Arrest Warrant, [ICC-01/11-01/17-13](#), para. 20; *Afghanistan* Appeals Judgment, [ICC-02/17-138](#), para. 79; *The Philippines* Article 15 decision, [ICC-01/21-12](#), paras. 113, 118; and *Al Kani* Article 58 Decision, [ICC-01/11-141-Anx1](#), paras. 6, 9.

⁹ This assessment has been guided by the Court’s jurisprudence: see e.g. *Mbarushimana* Jurisdiction Decision, para.42; *Côte d’Ivoire* Article 15 Decision, [ICC-02/11-14-Corr](#), paras. 178-179; *Mudacumura* Article 58 Decision, para.16; *Al-Werfalli* First Arrest Warrant, para. 23.

¹⁰ The Prosecution assessed the alleged criminality referred as being similar in scale, nature, manner of commission and impact to that occurring in eastern DRC since 1 July 2002, and as having targeted similar groups of victims based on similar lines of affiliation (actual or perceived), for similar apparent motivations.

¹¹ The Prosecution has followed the same practice in other situations upon the receipt of State Party referrals linked to an existing situation already under investigation.

¹² Because an investigation will occur into the alleged Rome Statute crimes committed in North Kivu since 1 January 2022, this decision should not be construed as a decision not to investigate within the meaning of article 53(3).