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No.: **ICC-01/04**
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PRE-TRIAL CHAMBER I

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

PUBLIC

**Public redacted version of "Prosecution's provision of information on the Situation
in the DRC", ICC-01/04-778-Conf-Exp, 27 July 2026**

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I. INTRODUCTION

1. The Prosecution provides information on the scope and progress of the investigation in the Situation in the Democratic Republic of the Congo, as requested by Pre-Trial Chamber I.

II. LEVEL OF CONFIDENTIALITY

2. The Prosecution files this document confidentially, *ex parte*, only available to the Prosecution and the Registry, consistent with regulation 23*bis* of the Regulations of the Court ("Regulations"), as it refers to confidential details of the ongoing investigation in the Situation in the DRC and correspondence exchanged between the Prosecution and a State Party. The Prosecution is filing a public redacted version of the document simultaneously.

III. BACKGROUND

3. On 3 March 2004, the Government of the DRC referred "the situation taking place in [the] country since 1 July 2002" to the Prosecutor, under article 14(1) of the Statute ("First Referral").¹

4. The Prosecution opened an investigation in the situation in 2004. Since that time, with regard to alleged crimes in Ituri Province, the Court has completed proceedings in four cases.² With regard to alleged crimes in North and South Kivu, the Court also commenced proceedings in two further cases.³

5. On 26 October 2011, Pre-Trial Chamber I (earlier composition) issued its "Decision on the 'Defence Challenge to the Jurisdiction of the Court'" in the

¹ Government of the DRC, Letter of referral from the Government of the DRC, ICC-01/04-01/06-39-AnxB1, 3 March 2004, and English translation ICC-01/04-01/06-39-AnxB1-tENG.

² *Lubanga, Katanga, Ngudjolo, Ntaganda*. Ituri was previously a district of Orientale Province.

³ *Mbarushimana and Mudacumura*. [REDACTED].

Mbarushimana case. Pre-Trial Chamber I found that the situation of crisis that triggered the referral was ongoing, and that the case, which concerned alleged criminality in North and South Kivu, fell within the scope of the First Referral.⁴

6. On 13 July 2012, Pre-Trial Chamber II issued its “Decision on the Prosecutor’s Application under Article 58” in the *Mudacumura* case, finding the case, which also concerned alleged criminality in North and South Kivu, was “linked to the situation which initially triggered the referral of the DRC situation to the Court”.⁵

7. On 18 May 2023, the Government of the DRC referred to the Prosecutor “*la situation de la province du Nord-Kivu dans la partie Est de son territoire national*”⁶ from 1 January 2022 “*à ce jour*” (“Second Referral”).⁷ The referral made reference to alleged crimes committed by “*la coalition Rwandan Defence Force (RDF) / Mouvement du 23 mars (M23)*”⁸.

8. On 1 June 2023, the Prosecutor and the Government of the DRC concluded a Memorandum of Understanding in which they committed to enhance their cooperation (“MoU”). The MoU identified the First Referral as the basis for the Prosecution’s activities in DRC.⁹

9. On 5 June 2023, the Prosecution notified the Presidency of the Second Referral. The Prosecution noted that the First Referral and the Second Referral appeared to overlap geographically and temporally, and stated that it would assess whether the

⁴ Case of *The Prosecutor v. Mbarushimana*, Decision on the “Defence Challenge to the Jurisdiction of the Court”, ICC-01/04-01/10-451, (“*Mbarushimana* Jurisdiction Decision”), 26 October 2011, para. 26.

⁵ Case of *The Prosecutor v. Mudacumura*, Decision on the Prosecutor’s Application under Article 58, ICC-01/04-01/12-1-Red, (“*Mudacumura* AWA Decision”), 13 July 2012, para. 16.

⁶ Government of the DRC, Referral of the situation in North Kivu, ICC-01/23-1-Conf-Exp-AnxII (“Second Referral”), 18 May 2026, para. 6. *See also* Government of the DRC, Letter from the Ministry of Justice of the DRC addressed to the Prosecutor of the International Criminal Court, contained in ICC-01/23-1-AnxI at pp. 4-5 (“Second Referral Transmission Letter”), 18 May 2023, p. 4.

⁷ [REDACTED]. *See also* Second Referral Transmission Letter, p. 4.

⁸ [REDACTED]. *See also* Second Referral Transmission Letter, p. 4.

⁹ *Mémorandum d’entente entre la République Démocratique du Congo et le Bureau du Procureur de la Cour pénale internationale* (“MoU”), 1 June 2023, art. 3.

referred scope of the two situations is sufficiently linked to constitute a single situation¹⁰ (“Preliminary Examination of the Situation in the DRC II”).

10. On 15 June 2023, in the context of the Prosecution’s notification of the Second Referral, the Presidency assigned the newly opened Situation in the DRC II to the Chamber.¹¹

11. [REDACTED].¹²

12. [REDACTED].¹³ [REDACTED].¹⁴

13. On 14 October 2024, the Prosecution filed its “Notification concerning the Prosecution’s determination with respect to the referral of the Democratic Republic of the Congo dated 23 May 2023” (“Notification”).¹⁵ The Prosecution informed the Chamber that it had finalised its Preliminary Examination of the Situation in the DRC II, and had concluded that any alleged Rome Statute crimes committed in North Kivu since 1 January 2022 (the scope of the Second Referral) would fall within the parameters of, and in any event were sufficiently linked to, the situation resulting from the First Referral.¹⁶ The Prosecution noted that, accordingly, it did not consider it necessary to “initiate an investigation” within the meaning of article 53(1) of the Statute and that, instead, it would investigate alleged crimes committed in North Kivu since 1 January 2022 within the existing Situation in the DRC.¹⁷

¹⁰ Prosecutor’s Memorandum to Presidency, contained in ICC-01/23-1-AnxI, pp. 2-3, at p. 3.

¹¹ Decision assigning the Situation in the Democratic Republic of the Congo II to Pre-Trial Chamber I, ICC-01/23-1, 15 June 2023.

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ The Prosecution filed the Notification in the record of the Situation in the DRC II.

¹⁶ Notification, paras. 1, 7.

¹⁷ Notification, paras. 2, 8.

14. On 22 June 2026, the Judges adopted regulation 66ter of the Regulations, addressing the closure of case and situation records.¹⁸

15. On 10 July 2026, the Chamber issued the Order to the Prosecution to provide information.¹⁹

IV. INFORMATION

16. The Order directs the Prosecution to clarify the scope and progress of its investigation.²⁰ Specifically it seeks clarification on

*“(i) the Prosecution’s understanding of the temporal scope of the First Referral; (ii) the legal and factual criteria on which [the Prosecution] concluded that the alleged criminality described in the Second Referral ‘is similar in scale, nature, manner of commission and impact’ to that in the First Referral and targeted ‘similar groups of victims’ and ‘for similar apparent motivations’; and (iii) whether, and if so how, the events in the Second Referral are being incorporated within the existing investigation in the Situation in the DRC”.*²¹

17. The Prosecution hereby provides the requested clarification, while respectfully recalling the guidance of the Appeals Chamber as to the distinct statutory competences of the Prosecution and the Pre-Trial Chamber in the conduct of investigations.²² In particular, while the Prosecution agrees that the Court’s jurisdiction must be exercised in accordance with the Statute, it recalls that—for referred situations, such as this situation—the Pre-Trial Chamber typically first

¹⁸ ICC Press Release, “ICC Judges amend the Regulations of the Court to regulate the closure of case and situation records”, 25 June 2026.

¹⁹ Order for the Prosecution to provide information, ICC-01/04-777, (“Order”), 10 July 2026, para. 5.

²⁰ Order, para. 5.

²¹ Order, para. 5.

²² See e.g., *Situation in Afghanistan*, Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan, ICC-02/17-138 (“*Afghanistan* Article 15 AJ”), 5 March 2020, para. 63.

verifies this in the concrete circumstances of a case presented for potential prosecution, in accordance with articles 19(1) and 58 of the Statute. Thereafter, if a prosecution is initiated, the correct exercise of the Court's jurisdiction may also be challenged and determined in accordance with article 19(2).²³

18. Accordingly, while the following information reflects the Prosecution's continued best assessment of the evidence available—which continues to support its view that the subject-matter of the Second Referral falls within the objective parameters of the situation already under investigation as a result of the First Referral, or is otherwise sufficiently linked to those parameters—this remains subject to the Prosecution's ongoing investigation. For this reason, the Prosecution respectfully submits that the Chamber need not issue its own determination at the present time on the information provided herein. Rather, this question will become ripe if and when the Chamber is seised of any application under article 58, on the facts of a concrete case.

A. The DRC's First Referral is temporally open-ended

19. Since the First Referral is temporally open-ended, the Prosecution understands the temporal parameters of the resulting situation accordingly, and its investigation remains ongoing.

20. This understanding is consistent with the terms of the First Referral and the findings of the Chamber (in an earlier composition) in the *Mbarushimana* Jurisdiction Decision.²⁴ While not dispositive, this also seems to align with the views of the

²³ The Prosecution additionally has the prerogative to request a ruling from the Pre-Trial Chamber under article 19(3) but does not consider it necessary to do so in the present situation.

²⁴ *Mbarushimana* Jurisdiction Decision, para. 26.

Government of the DRC in signing the MoU with the Prosecution in June 2023, when it acknowledged the ongoing nature of the Situation in the DRC.²⁵

21. There is no legal basis under the Statute to consider either that the Situation in the DRC (initially triggered by the First Referral) has terminated, or (on the facts as they stand) that the temporal parameters of that situation are now subject to an end date which was not contemplated in the First Referral. To the contrary:

- first, it is solely a matter for the Prosecutor to determine—on the basis of the investigation—whether and how many prosecutions should be initiated with respect to a given situation. In this regard, beyond its earliest (and now completed) cases concerning crimes committed in Ituri in 2002 and 2003, the Prosecution recalls that it has prosecuted cases concerning crimes allegedly committed in 2009 and 2010 in North and South Kivu. One of these cases remains on the Chamber’s docket, requiring the Prosecution to carry out residual fugitive tracking activities.²⁶ Furthermore, the Prosecutor has made no determination that the investigation in this situation is completed.
- second, while the Prosecution does not dispute that a referring entity may in principle choose to limit the temporal parameters of a situation—provided this remains compatible with the Statute— it is not obliged to do so. If it does not do so, an end-date should not automatically be read into a referral. In the present circumstances, where *neither* the First nor the Second Referral imposes a temporal end-date (and where, indeed, the subject-matter of the Second Referral is encompassed within the objective parameters of the situation under investigation as a consequence of the First Referral, or is otherwise sufficiently linked to them), there is no basis to consider that the Court’s exercise of jurisdiction in the Situation in the DRC is subject to a temporal end-date. The

²⁵ MoU, 1 June 2023, art. 3.

²⁶ [REDACTED].

Prosecution recalls that the mere fact of a subsequent referral does not *ipso facto* establish any temporal limit to the scope of the original investigation.²⁷

22. These principles do not mean that the Situation in the DRC is unrestricted in its scope. Rather, while there may be no express temporal limitation, the other objective parameters still adequately delimit the scope of the situation. It was in this context, as explained further below, that the Prosecution assessed the linkage between the subject-matter of the Second Referral and the scope of the investigation in the situation opened pursuant to the First Referral. This was based on factors including the broad continuity since 2002 of the contextual elements of alleged crimes; the actors/groups allegedly involved; the types and pattern of crimes committed; and the victims allegedly affected.

23. The Prosecutor's exercise of discretion to determine that investigations are now completed in *other* situations is irrelevant to the status of this situation.²⁸ Such determinations turn on the facts unique to each situation. As such, the disposition of one situation has no relevance to another. In any event, such determinations reflect the exercise of the Prosecutor's discretion to complete or close investigations, and do not terminate the Court's exercise of jurisdiction in that situation. Likewise, the Prosecutor exercises his or her authority over the management and administration of the Office of the Prosecutor, including the discretion to allocate Prosecution resources, independently from questions about the scope of referred situations in which the Court exercises its jurisdiction.²⁹

²⁷ See e.g., *Situation in the State of Palestine*, Judgment on the appeal of the State of Israel against Pre-Trial Chamber I's "Decision on Israel's request for an order to the Prosecution to give an Article 18(1) notice", ICC-01/18-481 OA3 ("Palestine Article 18(1) Notification AJ"), 15 December 2025, para. 105 (referring to "referrals [...] submitted with a view to urging the Prosecutor to advance the investigation" in respect of certain alleged crimes, but which did not *ipso facto* require the opening of a new investigation).

²⁸ [REDACTED].

²⁹ See Statute, art. 42(2). [REDACTED].

B. Multiple factors demonstrate similarities between the criminality covered by the First Referral and the Second Referral

24. In the Preliminary Examination of the Situation in the DRC II, the Prosecution analysed the contextual elements of the alleged crimes, the actors/groups allegedly involved, and the alleged criminality covered by the First Referral and the Second Referral. The identified similarities and continuity contributed to the Prosecution's determination that the subject-matter of the Second Referral fell within the objective parameters of the situation under investigation pursuant to the First Referral, or was otherwise sufficiently linked to them.³⁰

25. As part of this factual analysis, the Prosecution identified similarities and continuity in the following features of the alleged criminality (including types and pattern of crimes and the groups of victims):

- similarities in the scale of the criminality, in terms of the number of incidents resulting in a large number of victims;
- similarities in the nature of the criminality, in terms of whether it involved massacres and gender-based crimes;
- similarities in the manner of commission of the alleged crimes, in terms of the *modus operandi* of the actors and groups and whether the crimes involved particular cruelty or particular discriminatory acts;
- similarities in the impact of the alleged crimes, in terms of the harm inflicted on the affected communities; and

³⁰ Notification, para. 7.

- continuity in the grounds on which victims were allegedly targeted, in terms of whether they were targeted because they had or were perceived to have supported ‘the enemy’.

26. The Prosecution further recalls that an investigation is not limited to the factual information available during a preliminary examination, and that to establish the truth, “in order to obtain a full picture of the relevant facts, their potential legal characterisation as specific crimes under the jurisdiction of the Court, and the responsibility of the various actors that may be involved, the Prosecutor must carry out an investigation into the situation as a whole”.³¹

27. In the course of its investigation, the Prosecution is identifying which features of the violence in the situation may be relevant to specific potential cases. The Prosecution remains mindful of the Chamber’s authority to satisfy itself that it has jurisdiction in any case brought before it, including when the Prosecution seeks to initiate a prosecution under article 58.

C. The events covered by the Second Referral are part of the Prosecution’s ongoing investigation into the Situation in the DRC

28. The alleged crimes described in the Second Referral are part of a broader set of alleged criminality explained *inter alia* by long-standing geopolitical regional dynamics. To discharge its obligation to establish the truth, the Prosecution is actively investigating the alleged involvement of foreign (as well as local) actors in crimes allegedly committed in DRC now, just as it investigated similar allegations in earlier phases of its DRC investigation.³² This is a necessary part of any investigation into the

³¹ *Afghanistan* Article 15 AJ, para. 60. See also *Palestine* Article 18(1) Notification AJ, para. 82; Judgment on the appeal of Mr Abd-Al-Rahman against the Pre-Trial Chamber II’s “Decision on the Defence ‘Exception d’incompétence’ (ICC-02/05-01/20-302)”, ICC-02/05-01/20-503 OA8, 1 November 2021, para. 25.

³² The Prosecution’s investigations formed the basis of various Chambers’ findings on the existence of international and non-international armed conflicts involving foreign actors in all of the earlier cases in the

alleged criminality in Ituri and North and South Kivu Provinces, which have been at the core of an uninterrupted sequence of UN Security Council resolutions finding that the situation in the DRC constituted a threat to international peace and security since at least 2002.³³

V. CONCLUSION

29. The Prosecution trusts that the information in this filing serves to clarify the issues raised by the Chamber in the Order, and stands ready if it may further assist the Chamber.

30. Finally, in light of the Prosecution's previous notification that a separate investigation need not be opened in the Situation in the Democratic Republic of Congo

Situation in the DRC. See e.g., Case of *The Prosecutor v. Lubanga*, Judgment pursuant to Article 74 of the Statute, ICC-01/04-01/06-2842, 14 March 2012, paras. 554-555, 557-558, 561-565, 567; Case of *The Prosecutor v. Katanga*, Judgment pursuant to Article 74 of the Statute, ICC-01/04-01/07-3436-tENG, 7 March 2014, paras. 1198-1200, 1202-1205, 1212-1215, 1219-1227; Case of *The Prosecutor v. Ntaganda*, Judgment, ICC-01/04-02/06-2359, 8 July 2019, paras. 12, 31, 447-448, 639, 647-658, 711, 715, 728-730; Case of *The Prosecutor v. Mbarushimana*, Decision on the confirmation of charges, ICC-01/04-01/10-465-Red, 16 December 2011, paras. 95, 101-102, 107; *Mudacumura* AWA Decision, 13 July 2012, paras. 31, 34.

³³ See i.a. UNSC Resolution 1445 (2002), DRC-OTP-0131-0144 at 0001; UNSC Resolution 1468 (2003), DRC-OTP-0131-0153 at 0001; UNSC Resolution 1493 (2003), DRC-OTP-0131-0167 at 0002; UNSC Resolution 1552 (2004), DRC-OTP-0129-0163 at 0001; UNSC Resolution 1555 (2004), DRC-OTP-0129-0167 at 0001; UNSC Resolution 1616 (2005), DRC-OTP-0128-0672 at 0001; UNSC Resolution 1621 (2005), DRC-OTP-0128-0780 at 0002; UNSC Resolution 1649 (2005), DRC-OTP-0185-1917 at 0002; UNSC Resolution 1698 (2006), DRC-OTP-0185-1929 at 0002; UNSC Resolution 1799 (2008), DRC-OTP-2020-0027 at 0001; UNSC Resolution 1807 (2008), DRC-OTP-2020-0034 at 0002; UNSC Resolution 1856 (2008), DRC-OTP-2014-0945 at 0003; UNSC Resolution 1857 (2008), DRC-OTP-2020-0022 at 0002; UNSC Resolution 1896 (2009), DRC-OTP-2010-0361 at 0002; UNSC Resolution 1906 (2009), DRC-OTP-2020-0010 at 0003; UNSC Resolution 1925 (2010), DRC-OTP-2020-0002 at 0002; UNSC Resolution 1952 (2010), DRC-OTP-2041-0883 at 0003; UNSC Resolution 2021 (2011), DRC-OTP-2047-0282 at 0002; UNSC Resolution 2076 (2012), DRC-OTP-00002455 at 0002; UNSC Resolution 2078 (2012), DRC-OTP-00000396 at 0002; UNSC Resolution 2098 (2013), DRC-OTP-00000398 at 0004; UNSC Resolution 2136 (2014), DRC-OTP-00000400 at 0003; UNSC Resolution 2147 (2014), DRC-OTP-00000402 at 0005; UNSC Resolution 2198 (2015), DRC-OTP-00000406 at 0003; UNSC Resolution 2211 (2015), DRC-OTP-00000408 at 0004; UNSC Resolution 2277 (2016), DRC-OTP-00000410 at 0004; UNSC Resolution 2293 (2016), DRC-OTP-00000412 at 0004; UNSC Resolution 2348 (2017), DRC-OTP-00002456 at 0005; UNSC Resolution 2360 (2017), DRC-OTP-00000414 at 0005; UNSC Resolution 2409 (2018), DRC-OTP-00002457 at 0005; UNSC Resolution 2463 (2019), DRC-OTP-00002459 at 0005; UNSC Resolution 2502 (2019), DRC-OTP-00002461 at 0003; UNSC Resolution 2528 (2020), DRC-OTP-00002462 at 0001; UNSC Resolution 2556 (2020), DRC-OTP-00002463 at 0003; UNSC Resolution 2582 (2021), DRC-OTP-00002466 at 0002; UNSC Resolution 2612 (2021), DRC-OTP-00002464 at 0003; UNSC Resolution 2641 (2022), DRC-OTP-00000376 at 0002; UNSC Resolution 2666 (2022), DRC-OTP-00000378 at 0003; UNSC Resolution 2688 (2023), DRC-OTP-00000068 at 0002; UNSC Resolution 2717 (2023), DRC-OTP-00002688 at 0003; UNSC Resolution 2738 (2024), DRC-OTP-00002465 at 0002; UNSC Resolution 2765 (2024), DRC-OTP-00008854 at 0004; UNSC Resolution 2773 (2025), DRC-OTP-00008856 at 0002; UNSC Resolution 2783 (2025), DRC-OTP-00008858 at 0002; UNSC Resolution 2808 (2025), DRC-OTP-00008860 at 0003; and UNSC Resolution 2825 (2026), DRC-OTP-00008862 at 0002.

II, the Prosecution hereby provides the required notification to the Chamber for the purpose of regulation 66*ter*(2)(a) of the Regulations, and invites the Chamber to close the record of the Situation in the Democratic Republic of the Congo II (ICC-01/23).



Mame Mandiaye Niang, Deputy Prosecutor

Dated this 27th July 2026

At The Hague, The Netherlands