

EXPLANATION OF THE APPROACH ADOPTED BY THE VPRS FOR ASSESSING RULE 85 REQUIREMENTS

1. In its decision of 10 December 2009, the Chamber required the VPRS to “conduct an assessment” in relation to representations received, as to “whether the conditions set out in rule 85 of the Rules have been met.” In its Decision on Extension of Time Limit, the Chamber requested that the VPRS report to be submitted by 15 March should include information regarding the approach taken by VPRS in making rule 85 assessments, since this information would enable the Chamber to fully assess the content of victims’ representations.¹

1 General approach to rule 85 assessments

2. Each representation received by the VPRS was reviewed by a member of VPRS legal staff in order to assess whether the individual, group or person making the representation fell within the definition of victims under rule 85 of the Rules of Procedure and Evidence.

1.1 Standard of proof

3. During this process, VPRS bore in mind the Chamber’s explanation that “at this stage and given the limited scope of article 15 proceedings, the conditions set out in rule 85 of the Rules should be assessed on the basis of the intrinsic coherence of the information given by the victim(s).” VPRS understood this as meaning that in the context of these article 15 proceedings:

¹ ICC-01/09-7-Conf-Exp, paragraph 9.

- (a) It is appropriate to adopt a more flexible approach to rule 85 requirements, utilizing a lower standard of proof than a Chamber would ordinarily adopt when dealing with an application for participation in proceedings; and
- (b) Specifically, information submitted by a victim need not be supported by additional proof of its veracity, but will be judged on the basis of its internal consistency.

1.2 Requirements

- 4. The VPRS made its assessments by reference to the well-established core requirements for victim status under rule 85, whilst bearing in mind the less onerous standard of proof indicated by the Chamber.
- 5. For individuals, these core requirements are:²
 - (a) The individual is a natural person whose identity is sufficiently established;³
 - (b) The individual suffered harm;
 - (c) The harm was suffered as a result of the commission of a crime;
 - (d) The crime was within the jurisdiction of the ICC.
- 6. Since the Chamber required the VPRS to receive collective and/or individual representations from victims, there was also a need for the VPRS to consider how the requirements could be applied to collective representations. In doing

² ICC-02/04-101, paragraph 12; ICC-01/05-01/08-320, paragraph 30; ICC-01/04-01/06-101-tEN, paragraph 79.

³ ICC-02/04-101, paragraph 12: “whether the identity of the applicant as a natural person appears duly established”.

so, the VPRS took into account the presumed rationale of the Chamber in undertaking to accept collective representations from victims, namely that such an approach enables the views of a large number of victims to be communicated in a short period of time and without exposing each victim to security risks. The VPRS considered that such an objective would be undermined if it was nonetheless necessary for every person included in a given group to be individually identified to the Court. Representatives of very large groups could not be expected to know the personal details of every member of the group. Moreover, creating a list of individual names to provide to the VPRS could have the potential to create risks for persons named. For these reasons, in applying rule 85 the VPRS considered that the first requirement did not require that each member of the group was identified to the Court, but only that the group as a whole was sufficiently identified.

7. In addition the VPRS considered that some safeguard was necessary in order to ensure that the possibility of making collective representations was not abused – for example by a person purporting to present a representation on behalf of a very large number of persons whom he or she does not in fact represent. For this reason the VPRS thought it necessary that some information about the representative of the group be provided, as well as about the relationship between the representative and the group.
8. The requirements derived by the VPRS from the instructions provided by the Chamber for assessing whether groups of victims meet the conditions of rule 85 are therefore:
 - (a) The group is composed of natural persons and information on its nature and composition is provided;

- (b) The person or organization representing the group is identified;
- (c) The person or organization representing the group has authority to represent the group;
- (d) Members of the group suffered harm;
- (e) The harm was suffered as a result of the commission of a crime;
- (f) The crime was within the jurisdiction of the ICC.

9. In assessing the one organization which presented a representation for conformity with rule 85 paragraph (b), the VPRS adopted the following requirements:⁴

- (a) The organization is identified;
- (b) The person representing the organization is identified;
- (c) The person representing the organization appears to have authority to represent the organization;
- (d) The organization sustained direct harm to its property;
- (e) The property was dedicated to religion, education, art or science or charitable purposes, or was a historical monument, hospital or other place or object for humanitarian purposes;
- (f) The direct harm was sustained as a result of the commission of a crime;
- (g) The crime was within the jurisdiction of the ICC.

⁴ ICC-01/05-01/08-320, paragraphs 30 and 53, ICC-01/04-01/06-1556, paragraphs 105-111, ICC-01/04-01/07-1491, paragraphs 93-96.,

2 Application of this approach

10. In practical terms the approach taken meant that relatively little information was requested from persons making applications. This was reflected in the forms designed by the VPRS for use in the process of collecting representations. These forms asked only a small number of questions, and provided little space for responses. This was intended to indicate to those completing forms the limited nature and extent of information which was required.
11. On the same basis, when assessing applications received, a bare minimum of information demonstrating the requirements of rule 85 (as set out above) was treated as sufficient. For example, if a person indicated that she had “lost family members”, this was treated as sufficient to indicate that family members had been killed and that this had caused the victim emotional suffering. While more information would be required in an application for participation in proceedings – such as for example a clearer indication that the family members had been killed, and information regarding the nature of the family relationship – in applying the lower standard of proof such details were not treated as essential. This approach seemed particularly appropriate given that the short time frame in which the process has been undertaken did not permit requests for additional information to be made.

2.1 Specific issues

12. In undertaking rule 85 assessments a number of questions arose as to how the approach outlined above should be applied in relation to specific questions. In resolving such questions the VPRS has taken into account relevant jurisprudence as well as the guidance provided by the Chamber in its Order

to the Victims Participation and Reparations Section Concerning Victims' Representations Pursuant to article 15(3) of the Statute⁵ and Decision on Extension of Time Limit.⁶

(a) Proof of identity

13. The VPRS did not require those making representations to provide documents in order to establish the identity of individual victims, members of groups making collective representations, or persons making representations on behalf of organizations. This approach seemed appropriate in the light of the Chamber's decision that rule 85 assessments could be made on the basis of the "intrinsic coherence" of the information provided, as well as the circumstances in which the VPRS identified and contacted the individuals concerned as described in Annex 2, in most cases meeting them in person.

(b) Proof of authority to represent an organization

14. Similarly, those who made representations on behalf of organizations were not required to provide documentary proof of their authority to speak on behalf of the organization. This question was determined based on the "intrinsic coherence" of the information provided by the person.

⁵ ICC-01/09-4.

⁶ ICC-01/09-7.

(c) Proof of authority to represent a group

15. On the same basis, those persons who made a collective representation on behalf of a group of victims were not generally required to formally prove that they had the authority to represent the group.
16. However the VPRS was conscious that this was a particularly important issue, since without proper scrutiny the use of collective representations was open to possible abuse and could therefore potentially undermine the integrity of the process as a whole.
17. For this reason VPRS has sought to restrict collective representations of this type to those persons whom the Section was able to identify as community leaders or other representatives. Most of these were met by VPRS during its mission to Kenya, and this, together with enquiries made through contacts in Kenya, has enabled the VPRS to independently verify whether persons making collective representations do in fact appear to have an established relationship with the victim population in question, and that there are therefore grounds for believing that they have some form of representative capacity. Where collective representations were presented by persons whom VPRS had not met during its mission, enquiries were made through contacts in Kenya to verify the *bona fides* of these individuals and the legitimacy of their relationship with the communities in question. In some cases, where it was not possible in the time available to verify this information, the representations were treated as incomplete (see section 3.2 below).
18. An exception to this approach was made in relation to small family groupings. A number of women met by the VPRS wanted to make such representations on behalf of the family members for whom they are caring. The VPRS considered that in such cases the nature of the representative

relationship is inherently plausible. It also seemed that representations made on behalf of small groupings did not pose such a significant threat to the credibility of the process as a whole. The nature and legitimacy of the relationship between the representative and the group was therefore questioned in such cases only if cause for this was apparent from the representation itself.

19. A different approach was taken in respect of legal representatives who made representations on behalf of victims. In this case, bearing in mind that such persons do not claim to have established relationships with the victims represented, the VPRS required formal proof of their authority to represent the victims concerned.

(d) Signatures

20. While the vast majority of persons making representations appended their signature to the form where indicated, 19 did not do so. Whereas it is usually a requirement for acceptance as a participating victim that the application form has been signed by the applicant,⁷ in light of the lower standard of proof for this process, the VPRS took a more flexible approach.
21. Rule 85 defines “victims” by reference to substantive characteristics and not by compliance with any formal procedures. Furthermore, while rule 50 provides that victims “may make representations in writing”, it does not set formal requirements for such representations. Nor does Regulation 86 of the Regulations of the Court, which sets out the information that should be provided in written applications for participation in proceedings, establish

⁷ ICC-01/04-374, paragraph 12; ICC-01/05-01/08-320, paragraph 81.

any requirements as regards signatures. Chambers have established certain requirements regarding signatures applicable to applications to participate in proceedings, commensurate with the standard of proof established for a victim to be accepted to participate in proceedings.⁸ The signature is a device which confirms that the information contained in the document in fact reflects the views of the person signing. In this respect it is of value in this process where provided. However, given the lower standard of proof established for the current proceedings, and bearing in mind that the representations do not constitute a request for a legal status in the proceedings, but rather are a particular conduit for victims' opinions, the VPRS did not find any basis for concluding that a signature is a requirement to meet the definition of "victim", nor for a "victim" to make a representation to the Pre-Trial Chamber.

22. For these reasons unsigned representations, or representations which were signed but not dated, were not for that reason assessed as failing to meet the requirements of rule 85.

(e) Legal capacity

23. No representations were received from children, disabled persons or other victims whose legal capacity to make them might be questioned.

(f) Place and date of crime

24. In a number of cases the persons making representations described what happened to them but did not clearly indicate the location where these events

⁸ *ibid.*

occurred. In many instances it is possible to infer the general area from other information provided, but this is not always the case.

25. In a smaller number of cases, the representation did not clearly state the date on which a crime occurred, or did so imprecisely.

26. For those people who were reached through the targeted process of outreach undertaken through victim networks in Kenya, the VPRS worked on the basis of a presumption that the crimes occurred in Kenya, unless this was otherwise indicated. This reflects the reality that:

- Victims completing forms may have thought it unnecessary to indicate a fact which is obvious to them, especially given that forms were usually completed in the context of a discussion about a specific period of violence in Kenya;
- Victim communities were targeted for participation in this process on the basis that they were known to have suffered as a result of violence in Kenya during the relevant time period;
- The VPRS forms, which were used by most of those persons who made representations through the targeted process,⁹ were not distributed other than through the methods described in this report. For instance they were not made available on the internet, and are therefore unlikely to have reached individuals outside Kenya.

⁹ In total 382 representations were received which used the VPRS forms, while 25 did not use the forms.

(g) Categorization of crimes and the Court's subject matter jurisdiction

27. A determination whether or not a person meets the definition of "victim" under rule 85 involves considering whether or not the crime alleged is one which falls within the subject-matter jurisdiction of the Court. The information given by victims rarely addresses the *contextual* or *mental* elements of the crimes contained in articles 6 to 8. The question therefore arises as to the extent to which those elements can be considered in an assessment of victim status under rule 85.

28. In this context the VPRS recalls the approach taken by Single Judge Ušacka in an early decision in the Situation in the Democratic Republic of Congo: Judge Ušacka observed that:

"...explicit factual references to the contextual elements of crimes within the jurisdiction of the Court are often not present in the applications. In other words, Applicants rarely, if ever, allege specific facts that would expressly indicate that the harm they suffered was a part of a 'manifest pattern of similar conduct directed against that group' or that the harm occurred in the 'context of an international or non-international armed conflict, and the perpetrators must have been aware of the factual circumstances of the conflict.

29. The Single Judge determined that information provided in the application would be "viewed in a light most favourable to the Applicants, from which the Single Judge may directly infer the material, moral and contextual elements of the crimes within the jurisdiction of the Court."

30. In the present process, where information contained within the applications was not sufficient, the VPRS has taken into account information submitted by

the prosecutor in his Request for authorisation¹⁰ and Response to Decision Requesting Clarification and Additional Information.¹¹

31. Related issues arose for the VPRS in considering the many instances of harm mentioned in the representations that were suffered as a result of the destruction or theft of property. Categorizing such conduct within article 7 of the Statute is not a simple matter. Finding no jurisprudential support for the possibility that such crimes could be covered by article 7(1)(k), the VPRS focused instead on the crime against humanity of persecution, under article 7(1)(h). This in turn raised questions about whether the discriminatory aspect of the crime could be presumed, relying on extraneous materials, or needed to be shown in each particular case. Adopting the approach set out above, the VPRS took into account the significant volume of information provided by the Prosecutor which describes the targeting of violence on political and/or ethnic grounds. In the light of this information it assumed that discriminatory targeting did not need to be demonstrated or mentioned by individual victims. This also accorded with the likelihood that many victims see this fact about the nature of the violence as so evident that it need not be explained. (Despite this, it is also worth noting that many victims did mention discriminatory targeting policies suggestive of the crime of persecution). On this basis, when making rule 85 assessments, the VPRS treated property-related crimes as falling within the jurisdiction of the Court.

32. There were more significant challenges in relation to the contextual elements of crimes said to have occurred before or after the peak period of violence

¹⁰ ICC-01/09-3.

¹¹ ICC-01/09-16.

addressed by the Prosecutor. In relation to such crimes the VPRS has resorted to publicly available materials, as well as to material obtained by the VPRS for the purpose of mapping victim communities,¹² in order to verify that there are at least some grounds for considering that the contextual elements for crimes against humanity might be established.

33. [REDACTED]

(h) Harm suffered

34. In considering whether persons making representations have “suffered harm” within the meaning of rule 85, the VPRS has taken into account the ruling of the Appeals Chamber that harm “does not necessarily have to be direct” but “must be personal”,¹³ that harm can be at once personal and collective in nature,¹⁴ and that:

Material, physical, and psychological harm are all forms of harm that fall within the rule if they are suffered personally by the victim. Harm suffered by one victim as a result of the commission of a crime within the jurisdiction of the court can give rise to harm suffered by other victims.¹⁵

35. The VPRS has also taken account of the decision rendered by Trial Chamber I, where it found that:

...in accordance with Principle 8 of the Basic Principles [and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law], a victim may suffer, either individually or collectively, from harm in a variety of different ways such as physical or

¹² Especially Annex 3.

¹³ ICC-01/04-01/06-1432.

¹⁴ ICC-01/04-01/06-35.

¹⁵ ICC-01/04-01/06-1432 paragraph 32.

mental injury, emotional suffering, economic loss or substantial impairment of his or her fundamental rights.¹⁶

36. Guided by these decisions, the VPRS has considered that the following were among the categories of harm that were considered sufficient for the purposes of rule 85:

- *Extended periods of displacement.* Many victims cited as a form of harm the fact that they have been displaced from their homes and/or areas of origin for long periods of time. Some have lived for long periods of time in camps for internally displaced persons. Some victims also mentioned more specific kinds of suffering connected with such displacement, such as a lack of adequate food and shelter, schooling for their children, and an interference with their family life. Some victims merely mentioned the fact of their displacement when asked about the harm they had suffered. The VPRS has considered that for victims displaced over a long period, or living for long periods in camps, it can be inferred that harm of these kinds are likely to have been suffered. Such harm might be categorized as the substantial impairment of fundamental rights, or it might be categorized as moral harm.
- *Emotional suffering due to death of a family member.* Where a person indicated that they have suffered emotional harm due to the death of a family member in the violence, the VPRS treated this as sufficient for establishing that harm was suffered. The VPRS did not require specific information as to the identity of the deceased person, or the precise relationship to him or

¹⁶ ICC-01/04-01/06-1119, paragraph 92.

her. This reflects the standard of proof used in this process, which is lower than that applied when a person applies to participate as a victim in proceedings.

The VPRS also took the approach of inferring that emotional harm had been suffered where the death of a family member was explicitly mentioned in the representation. The VPRS believes that many people would consider the suffering of emotional harm to be self-evident once the death of a family member is mentioned and for this reason do not expressly describe such harm.

- *Indirect economic harm.* In some cases victims described having suffered indirect forms of economic harm. One man described his experience as follows: “I am self-employed and the people I relied on contracts stop[ed] giving me jobs because they’re affected by post-election violence. Because of this I lost my job and my children couldn’t go to school because of it I had no money to pay for their school fees.”¹⁷ He also mentions “intense psychological trauma” however it is not clear whether this resulted from his loss of income or from his exposure to the violence itself. In any event, VPRS has considered that the loss of income suffered by this individual could be considered a type of indirect harm of the kind described by the Appeals Chamber, since it is an example of where “[h]arm suffered by one victim as a result of the commission of a crime within the jurisdiction of the court [gave] rise to harm suffered by other victims.”¹⁸

¹⁷ r/0166/10

¹⁸ ICC-01/04-01/06-1432 paragraph 32.

The same approach was applied to another individual victim¹⁹ who explained in his representation that “Nothing happened to me, but to my relatives. They [are] displaced in Rift Valley and their property taken.” He went on to explain that he is suffering financially from having to take care of his sister’s children.²⁰

The VPRS is cognisant that such an approach has potentially significant ramifications because of the number of potential victims it would embrace. However it notes that there is no jurisprudence which limits the concept of indirect harm to emotional suffering of the kind which has been accepted by various Chambers to date. Given the stage of proceedings and the flexible approach adopted, for the purposes of this report the VPRS has therefore considered appropriate to accept this type of harm as satisfying the requirements of rule 85.

- *Damage to reputation.* In at least one case a person making a representation appears to have suffered no harm other than that to his reputation.²¹ The VPRS notes that a loss of social status appears to have been taken into account as a relevant type of harm in at least one decision on victims’ participation although in that case it was not the only type of harm suffered.²² Again, given the stage of proceedings and the flexible approach adopted, the VPRS considered it appropriate to accept this type of harm as satisfying the requirements of rule 85.

¹⁹ r/0362/10

²⁰ Reference is also made to psychological harm, although it is not clear from the representation what the specific cause of this is.

²¹ r/0033/10. See further below.

²² ICC-02/05-02/09-147, paragraphs 17, 25, 33.

(i) Representation r/0033/10

37. Representation r/0033/10 presented particular challenges which the VPRS considers are worth drawing to the Chamber's attention.²³

38. Representation r/0033/10 was provided by a Kenyan national residing in [REDACTED]. The individual describes that he has witnessed "actions that would amount to incitement to violence" and that he also considers himself to be "a victim of such incitement or harassment". The acts in question are detailed in the representation. They can be summarized as the use of the internet, email and sms to spread to a mass audience allegations, rumours and calls for action (legal or otherwise) which might have had the effect of inciting or exacerbating violence.

39. VPRS notes that it was not in a position to assess in detail certain issues which are relevant to whether or not these acts could constitute crimes within the jurisdiction of the ICC. For example, it is not known (it appears that the individual making the representation not being in a position to know) whether in fact such acts had the result of causing violence, and whether they were intended to have this result. Without this information and more detail of the acts themselves, the VPRS has not considered itself in a position to carefully categorize which, if any, of the modes of liability listed in article 25 of the Rome Statute, might have been constituted by the acts in question. The VPRS therefore sought to take a more general approach, and concluded that there is sufficient information to consider that the conduct detailed in the representation might fall within the Court's jurisdiction.

²³ VPRS sought to obtain more information from the victim who presented this representation but did not manage to do so.

40. The VPRS also notes that rule 85 refers to the “commission” of a crime within the Court’s jurisdiction. Since “commission” is also one of several modes of individual criminal liability provided for in article 25(3) of the Rome Statute,²⁴ the question arises as to whether rule 85 is intended to be restricted to that particular mode of liability. In other words, it is not clear whether rule 85 can only be triggered when a crime is *committed* in the sense of article 25(3)(a), or whether it also applies when a crime is, for example, *attempted*. Interpreting rule 85 in the light of its evident objective, the VPRS has assumed for the purposes of this report that the term “commission” in the rule is intended to be meant in a broader sense than in article 25(3)(a). In this regard the intention behind rule 85 appears to be to limit victim status to cases in which harm suffered can be linked to conduct which is criminalized by the Rome Statute regime. There does not appear to be any basis to conclude that rule 85 would seek to exclude from its ambit a person who suffers harm as a result of one of the acts listed in article 25(3)(b) to (f). For this reason, and without purporting to determine in a precise way which mode of liability might be constituted by the conduct described in r/0033/10, VPRS has concluded that the representation provided some grounds for believing that a crime within the jurisdiction of the Court was committed.

41. The VPRS has also concluded that it was possible to infer from the representation that the individual had suffered harm. The representation indicates that false accusations had been made against him in internet discussion lists, alleging that he was involved with or was supporting

²⁴ Article 25(3)(a) uses the word “commits” whereas rule 85 uses the word “commission”. However there is nothing to indicate that the different grammatical form in itself implies a different legal meaning.

criminal gangs. VPRS considered it appropriate to infer from this that the individual suffered damage to his reputation.

42. A more difficult question arose as to whether this harm suffered could be said to have occurred *as a result of* the crime identified. The VPRS notes the recognition by Judge Politi that “the determination of a causal link between a purported crime and the ensuing harm is one of the most complex theoretical issues in criminal law” and that therefore in the context of assessing victim status, a “pragmatic, strictly factual approach” is appropriate, “whereby the alleged harm will be held as ‘resulting from’ the alleged incident when the spatial and temporal circumstances surrounding the appearance of the harm and the occurrence of the incident seem to overlap, or at least to be compatible and not clearly inconsistent.”²⁵
43. In the present case the challenge in considering this requirement is unusual. It concerns the fact that the harm in question appears to have flowed not from the alleged crime against humanity itself, but from the acts which might have encouraged it, and which might amount to one of the types of conduct set out in article 25(3)(b) or perhaps even article 25(3)(e).
44. The VPRS has taken into account the existing jurisprudence on this requirement, which requires that the harm was “directly linked” to the crime in question or that the harm was suffered while intervening to help direct victims;²⁶ and that harm need not be direct but must be personal.²⁷ In the absence of any precedents more directly on point, the VPRS considers that in

²⁵ ICC-02/04-101, paragraph 14.

²⁶ ICC-01/04-01/06-172-tEN, pp8-9; ICC-01/04-01/06-1556, paragraph 108

²⁷ ICC-01/04-01/06-1432.

the light of the stage of proceedings and the low standard of proof to be applied, it is appropriate to consider this representation as coming from a victim within the meaning of rule 85.

2.2 Approach taken toward applications for participation and reparations

45. In addition to the representations received, the VPRS has also received a number of completed standard application forms for reparations or for participation in ICC proceedings.

46. The great majority of such applications are linked with representation r/0392/10. This representation was made by the legal representative of 393 victims and presents their views on the subject of the Prosecutor's request. These 393 victims have been identified to the VPRS by the provision of applications for reparations.²⁸ In the light of the time constraints under which the VPRS has undertaken this process, and the fact that these victims have presented a collective representation to the Court through their legal representatives, the VPRS considered it sufficient to assess the *group* of victims according to the requirements set out above for a collectivity. It did not undertake separate rule 85 assessments in respect of each application received.

47. In addition, one application for participation was submitted by an individual who details his views on the ICC in a letter to the Prosecutor that was

²⁸ The full list of the 393 victims is included in representation r/0392/10. In fact the VPRS received 397 application forms, but four of these are duplicates. In addition, one application (a/0669/09) sent to the VPRS independently is also a duplicate of an application in the group covered by r/0392/10.

attached to his application. VPRS has treated this as a representation (r/0208/10), since it contains opinions pertinent to the Chamber's decision.

48. The VPRS received a further 7 applications for participation or reparations using the Court's standard application forms which were not linked to any representation and which did not expressly provide views on the question of a possible ICC investigation. The VPRS considers that these applications may nonetheless be relevant for the Chamber in the sense that it might be inferred from the fact of their applications that these individuals want the ICC to be involved in Kenya. For this reason the VPRS has assessed the applications to ensure that the persons providing them are in fact victims according to the tests set out above. All seven applications were considered to meet this requirement. Since the VPRS considers that the applications themselves are unlikely to be of immediate relevance to the Chamber's decision, they are not annexed to this report. However the identities of the individuals who provided them are set out in Annex 10.

3 Outcomes of the rule 85 assessments

3.1 Overview of outcomes

49. After undertaking the assessments under rule 85 as described above, the VPRS concluded that of the 406 representations received:

- Three hundred and ninety-six representations came from victims or groups of victims who meet the definition set out in rule 85. This includes 76 collective representations, 320 representations from individuals, and no representations from organizations.
- Ten representations were received from persons who did not appear to fall within the definition of a victim in rule 85, or who did not appear to

have the capacity to represent the organization/group on whose behalf they purported to speak. These include 5 collective representations, 4 representations from individuals, and one representation from an organization.

3.2 Representations excluded

50. In relation to the representations which were considered not to meet the conditions of rule 85, the VPRS provides the following reasons.

51. Representation r/0016/10 was received from a person purporting to act on behalf of [REDACTED]). He described the burning of a building dedicated to religion which took place during the peak of violence in 2007-08. Based on a review of this representation using the “intrinsic coherence” approach, VPRS considered that it appears that direct harm was sustained to the property of the organization which was dedicated to religion, and that this harm was sustained as a result of the commission of a crime within the jurisdiction of the Court. However the VPRS considered that it did not have enough information regarding the relationship between the organization and the person who purported to represent it. It appeared from the representation that the individual is indeed a functionary in the organization, in that he is a [REDACTED] of the [REDACTED], but no information suggesting that he is empowered to speak on behalf either of the specific [REDACTED] or of the [REDACTED] more widely was included in the representation. For this reason the representation was considered by VPRS not to meet the

requirements of rule 85, since it is not clear that it was in fact made by the organization whose property was damaged.²⁹

52. Representations r/0184/10, r/0185/10 and r/0187/10 were all provided to the VPRS through the [REDACTED]. Each of these representations is constituted by a letter or completed [REDACTED] form [REDACTED]. None of these representations includes information about a crime within the jurisdiction of the Court. Indeed, it does not appear that they were produced for the purpose of presenting views for the ICC, but rather for [REDACTED]. Since they do not provide any information on the basis of which a crime within the ICC's jurisdiction can be identified, VPRS has regarded them as not meeting the requirements of rule 85.

53. Representation r/0186/10 was provided by the [REDACTED] together with representations r/0184/10, r/0185/10 and r/0187/10. It suffers from the same difficulty as these other representations, in that it does not refer at all to any crime within the jurisdiction of the ICC, but rather appears to be a [REDACTED]. The distinguishing feature of this representation is that it is made by a lawyer who represents victims, and [REDACTED]. The VPRS considered whether or not his views as contained in this document might be understood as a representation made on behalf of those victims whom he represents. However the identities of the victims he represents are not known or apparent from the document. Moreover, and most importantly, the document does not appear to have been written with the intention of presenting the views of the victims represented by the lawyer, [REDACTED].

²⁹ VPRS notes for the information of the Chamber that the individual who sought to make this representation also submitted an individual representation, which is numbered r/0015/10 and which was considered by the VPRS to meet the conditions of rule 85.

Insofar as the document touches on the subject of an ICC investigation it is clear that the views mentioned are those of the lawyer himself. For these reasons, the VPRS considered that this representation did not meet the requirements of rule 85.

54. Representations r/0199/10, r/0211/10, r/0331/10, r/0333/10 and r/0337/10 are all collective representations. Representations r/0333/10 and r/0337/10 were made by named individuals who purport to act on behalf of particular victim communities. However they had not been in direct contact with the VPRS, and nor was VPRS able to learn anything about their relationship with the communities in question from partners in Kenya. The VPRS was therefore unable to satisfy itself that these individuals are in a position to speak on behalf of the victim groups in question. Representations r/0199/10, r/0211/10 and r/0331/10 were made by unidentified individuals. Since no names were provided in these representations by the persons making them, VPRS was not able to satisfy itself as to the identity of the person making the representation on behalf of the group, *or* as to whether that person has the authority to speak on behalf of the group. For these reasons VPRS has treated these representations as incomplete and not, in their present state, satisfying the requirements of rule 85.

55. These representations are in any event provided for the Chamber's reference, in Annex 9.

56. The VPRS notes that in the course of this process it has been given no reason to believe that any representation has been submitted fraudulently or in an attempt to abuse the mechanism provided for in article 15(3).

57. The VPRS also notes that the fact that conclusions were made that the above representations did not meet the requirements of rule 85 are not intended to

suggest that the individuals and communities in question are not legitimate victims. Rather they reflect a lack in either the quality or nature of the information which was provided, and the fact that in this process there was usually no opportunity for the VPRS to request further information which might have enabled a different conclusion to be reached.

3.3 Other documents received

58. In addition to the representations which VPRS considered did not meet the requirements of rule 85, VPRS has also received several documents from human rights groups in Kenya that appear to be intended for the attention of the Chamber.³⁰

59. The VPRS notes that the opportunity provided under article 15(3) for the provision of representations is limited to “victims”, a term which is defined under the Rules of Procedure and Evidence. In this instance the submissions in question are made by Kenyan organizations which work with victims, however these organizations do not purport to themselves be victims of crimes within the jurisdiction of the Court. Nor do they purport to speak on behalf of victims of crimes before the jurisdiction of the Court. The VPRS therefore considers that these submissions are not accorded the special procedural status given under article 15(3) and rule 50.

60. These documents are on file with the VPRS and could be provided to the Chamber upon request.

³⁰ The VPRS received the following documents from various civil society organizations: [REDACTED]