

**Cour  
Pénale  
Internationale**

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**International  
Criminal  
Court**

No. ICC-01/04

Date: 17 January 2006

Original: French

**PRE-TRIAL CHAMBER I**

**Before:** Judge Claude Jorda, Presiding Judge  
Judge Akua Kuenyehia  
Judge Sylvia Steiner

**Registrar:** Mr Bruno Cathala

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

**PUBLIC REDACTED VERSION**

**DECISION ON THE APPLICATIONS FOR PARTICIPATION IN THE  
PROCEEDINGS OF VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6**

**The Office of the Prosecutor**

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**PRE-TRIAL CHAMBER I** of the International Criminal Court (“the Chamber” and “the Court” respectively) has been seized of applications for participation in the proceedings filed on 26 May 2005 pursuant to article 68 (3) of the Statute of the Court (“the Statute”) in the context of the investigation of the situation in the Democratic Republic of the Congo (DRC).

Having examined the written and oral submissions of Applicants VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6, the Chamber

**RENDERS THIS DECISION.**

## I. INTRODUCTION

### A. Background

1. On 23 May 2005, a “Report to PTC I in accordance with rule 89 paragraph 1 of the Rules of Procedure and Evidence, and Regulation 86 paragraph 5 of the Regulations of the Court”<sup>1</sup> was registered by the Registry in the record of the situation in the Democratic Republic of the Congo (“the record”).

2. On 14 June 2005, the Registry registered in the record a letter from Mr Sidiki Kaba, President of the International Federation for Human Rights (FIDH),<sup>2</sup> submitting the applications for participation of victims designated VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6 (“the Applicants”) and a mandate authorising Emmanuel Daoud to represent them.<sup>3</sup>

3. The applications for participation in the proceedings Nos. 01/04-1/dp to 01/04-6/dp,<sup>4</sup> and the memorandum in support of the applications<sup>5</sup> were also registered in the record on 14 June 2005.

4. Pre-Trial Chamber I issued an “Order requesting additional information”,<sup>6</sup> which was registered in the record on 27 May 2005.

5. On 10 June 2005, the “Answers to the questions asked in the annex to the Order of Pre-Trial Chamber I of 27 May 2005”<sup>7</sup> submitted by the legal representative (“the answers of the legal representative”) were registered by the Registry in the record.

<sup>1</sup> ICC-01/04-22-Conf-Exp. NB: In this decision, the registration dates given correspond to the date on which the original document was registered. Translations are usually registered at a later date.

<sup>2</sup> ICC-01/04-23-Conf-Exp-tEN.

<sup>3</sup> ICC-01/04-24-Conf-Exp.

<sup>4</sup> The “Application for participation in the proceedings No. 01/04-1/dp” is that of the Applicant designated VPRS-1 and was registered as ICC-01/04-25-Conf-Exp-tEN; the “Application for participation in the proceedings No. 01/04-2/dp” is that of the Applicant designated VPRS-2 and was registered as ICC-01/04-26-Conf-Exp-tEN; the “Application for participation in the proceedings No. 01/04-3/dp” is that of the Applicant designated VPRS-3 and was registered as ICC-01/04-27-Conf-Exp-tEN; the “Application for participation in the proceedings No. 01/04-4/dp” is that of the Applicant designated VPRS-4 and was registered as ICC-01/04-28-Conf-Exp-tEN; the “Application for participation in the proceedings No. 01/04-5/dp” is that of the Applicant designated VPRS-5 and was registered as ICC-01/04-29-Conf-Exp-tEN; the “Application for participation in the proceedings No. 01/04-6/dp” is that of the Applicant designated VPRS-6 and was registered as ICC-01/04-30-Conf-Exp-tEN.

<sup>5</sup> ICC-01/04-31-Conf-Exp-tEN (“the memorandum in support”).

<sup>6</sup> ICC-01/04-33-Conf-Exp-tEN.

<sup>7</sup> ICC-01/04-36-Conf-Exp-tEN.

6. The reply of the FIDH to the “Order requesting additional information”<sup>8</sup> was registered in the record on 21 June 2005.

7. On 24 June 2005, a “Request to extend a deadline”,<sup>9</sup> filed by the President of the FIDH, was registered in the record.

8. An “Order calling a hearing”,<sup>10</sup> issued by Pre-Trial Chamber I, was registered in the record on 28 June 2005.

9. By a letter registered in the record on 11 July 2005,<sup>11</sup> the President of the FIDH informed Pre-Trial Chamber I that he would be unable to attend the hearing of 12 July 2005.

10. The solemn undertaking of Mr Daoud<sup>12</sup> was registered in the record on 13 July 2005.

11. On 14 July 2005, the Registry registered the “Decision regarding the request to extend a deadline”<sup>13</sup> rendered by Pre-Trial Chamber I.

12. The observations of the Victims and Witnesses Unit on the protection of witnesses and victims in the DRC<sup>14</sup> were registered in the record on 18 July 2005.

13. On the same day, the Registry registered in the record the reply of the Victims Participation and Reparations Section<sup>15</sup> further to the confidential hearing of 12 July 2005, together with a copy signed by Mr Daoud of a supplementary brief further to the same hearing.<sup>16</sup>

14. On 19 July, another copy of the “Supplementary brief further to the hearing of 12 July”,<sup>17</sup> signed by the President of the FIDH, Mr Sidiki Kaba, was registered in the record.

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<sup>8</sup> ICC-01/04-46-Conf-tEN (“the reply of the FIDH”).

<sup>9</sup> ICC-01/04-47-Conf-Exp.

<sup>10</sup> ICC-01/04-48-Conf-Exp-tEN.

<sup>11</sup> ICC-01/04-56-Conf-Exp.

<sup>12</sup> ICC-01/04-57.

<sup>13</sup> ICC-01/04-59-Conf-Exp-tEN.

<sup>14</sup> ICC-01/04-65-Conf-Exp.

<sup>15</sup> ICC-01/04-66-Conf-Exp.

<sup>16</sup> ICC-01/04-67-Conf-Exp.

<sup>17</sup> ICC-01/04-68-Conf-Exp.

15. The material presented at the confidential hearing of 12 July 2005<sup>18</sup> was registered in the record on 21 July 2005.

16. Pre-Trial Chamber I rendered a “Decision on protective measures requested by Applicants 01/04-1/dp to 01/04-6/dp”,<sup>19</sup> which was registered in the record on 22 July 2005.

17. Ad hoc Defence counsel filed a response to the applications for participation of victims in the proceedings,<sup>20</sup> which was registered in the record on 11 August 2005.

18. The “Prosecution’s Reply on the Applications for Participation 01/04-1/dp to 01/04-6/dp”<sup>21</sup> was registered in the record on 15 August 2005.

## **B. Questions raised before the Chamber**

19. In their application forms, each of the Applicants describes his or her application to the Chamber as follows:

By means of this application and through my legal representative, I wish to participate in the proceedings, be it at the investigation, trial or sentencing stage, and to invoke all provisions of the Statute, Rules of Procedure and Evidence and Regulations of the Court concerning the rights of victims who have applied to participate in the proceedings.<sup>22</sup>

20. The legal representative of the Applicants submits their respective requests in the following terms:

On behalf of the victims identified in the forms to which this memorandum is appended, the undersigned requests Pre-Trial Chamber I to grant them the status of victims in the procedure and allow them to present their views and concerns during the rest of the proceedings under way on the “Situation in the Democratic Republic of the Congo”.<sup>23</sup>

The Applicants meet the conditions set out in the Statute and the Rules as: 1) they are natural persons; 2) in each case, a crime within the jurisdiction of the Court and within the scope of the “situation in the DRC” was committed; 3) in

<sup>18</sup> ICC-01/04-70-Conf-Exp, ICC-01/04-71-Conf.

<sup>19</sup> ICC-01/04-72-Conf.

<sup>20</sup> ICC-01/04-81-Conf.

<sup>21</sup> ICC-01/04-84-Conf (“the Prosecution’s reply”).

<sup>22</sup> Application No. ICC-01/04-25-Conf-Exp-tEN, p. 3; Application No. ICC-01/04-26-Conf-Exp-tEN, p. 3; Application No. ICC-01/04-27-Conf-Exp-tEN, p. 3; Application No. ICC-01/04-28-Conf-Exp-tEN, p. 3; Application No. ICC-01/04-29-Conf-Exp-tEN, p. 3; Application No. ICC-01/04-30-Conf-Exp-tEN, p. 3.

<sup>23</sup> Memorandum in support, para. 23.

each case, the Applicants suffered harm; 4) in each case, there is a causal link between the crime committed and the harm suffered. These four components appear clearly in the forms to which this memorandum is appended; it will therefore be sufficient just to refer back to them. It is now up to Pre-Trial Chamber I to accord the current Applicant the status of victim, in accordance with rule 89 of the Rules of Procedure and Evidence, and to define the modalities of their participation.<sup>24</sup>

21. The Chamber considers that the Applicants are requesting in these applications that they be accorded the status of victims in order to participate in the proceedings as a whole.

22. The Applicants' request raises two main questions: whether the Statute, the Rules of Procedure and Evidence ("the Rules") and the Regulations of the Court accord victims the right to participate in the proceedings at the stage of investigation of a situation and, if so, what form such participation should take. A further question to be addressed is whether the six Applicants meet the criteria for being considered victims within the meaning of rule 85 of the Rules.

## II. ON WHETHER THE STATUTE, THE RULES OF PROCEDURE AND EVIDENCE, AND THE REGULATIONS OF THE COURT PROVIDE FOR THE PARTICIPATION OF VICTIMS AT THE STAGE OF INVESTIGATION OF A SITUATION

23. In his memorandum in support of the victims' applications for participation, the legal representative of the victims emphasises the fact that the applications for participation are based on article 68 (3) of the Statute and that their purpose is to permit the views and concerns of the victims to be presented and considered at this stage of the investigation and throughout the proceedings before the Court.<sup>25</sup>

24. In his memorandum, ad hoc Defence counsel does not challenge either the applicability of article 68 (3) of the Statute to this stage of the investigation or the possibility in legal terms of participation by the victims at this stage of the proceedings.<sup>26</sup>

25. In its memorandum, the Office of the Prosecutor challenges the applicability of article 68 (3) of the Statute at this stage of proceedings on the following grounds. First, there are,

<sup>24</sup> Ibid., para. 5.

<sup>25</sup> Ibid., para. 1.

<sup>26</sup> "Response by ad hoc Defence counsel to the applications for participation by victims in the proceedings registered under Nos. 01/04-01/dp, 01/04-02/dp, 01/04-03/dp, 01/04-04/dp, 01/04-05-dp, 01/04-06-dp", 11 August 2005, No. ICC-01/04-81-Conf, see pages 6 to 9 on the admissibility of applications for participation and pages 14 and 15 on the conclusions.

strictly speaking, no proceedings within the meaning of article 68 (3) of the Statute during the investigation phase<sup>27</sup> because, from a terminological point of view, the word proceedings does not encompass the investigation of a situation.<sup>28</sup> In terms of context, article 68 is in Part 6 of the Statute, which is entitled “The Trial”,<sup>29</sup> and rule 92 confines the participation of victims to the stages mentioned in sub-rules 2 and 3 of that rule.<sup>30</sup> Second, the participation of victims at the investigation stage is inappropriate.<sup>31</sup> Third, the Applicants failed to show that their personal interests were affected at the investigation stage.<sup>32</sup>

26. Article 68 (3) of the Statute states:

Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.

27. The Chamber therefore considers that the following questions must be examined: (A) whether, in the light of article 68 (3) of the Statute, proceedings may be considered to exist at the investigation stage; (B) the conditions of application of article 68 (3) during the stage of investigation of a situation; and (C) the modalities of the participation of victims in the proceedings at the investigation stage.

**A. On whether, in the light of article 68 (3) of the Statute, proceedings exist at the investigation stage**

28. The Chamber will address the arguments as follows: first the terminological argument, second the contextual argument and third the teleological argument.

*1. The terminological argument*

29. The Office of the Prosecutor argues that the Statute, particularly article 127,<sup>33</sup> makes a distinction between the terms “investigation” and “proceedings”.<sup>34</sup> The Office of the Prosecutor therefore “considers that there are no ‘proceedings’ pursuant to article 68 (3) of the

<sup>27</sup> The Prosecution’s reply, para. 13.

<sup>28</sup> Ibid, para. 13.

<sup>29</sup> Ibid, para. 18.

<sup>30</sup> Ibid, para. 16.

<sup>31</sup> Ibid, para. 30.

<sup>32</sup> Ibid, paras. 23 and 26.

<sup>33</sup> Article 127 of the Statute is in Part 13, which is entitled “Final Clauses”.

<sup>34</sup> The Prosecution’s reply, para. 13.



Statute during the investigation stage” since “both the Statute and the RPE make a clear distinction between ‘investigation’ and ‘proceedings’”.

30. The Chamber observes that the terms “proceedings”<sup>35</sup> and “*la procédure*”<sup>36</sup> are used repeatedly in the English and French versions of the Statute.<sup>37</sup> Article 127 of the Statute, which the Office of the Prosecutor cites as an example, is the only article of the Statute in which a distinction appears to be made between the notions of investigation and proceedings. Moreover, the article is in the last part of the Statute, which does not deal with proceedings before the Court but contains the final clauses.

31. Furthermore, the French version of article 127 of the Statute does not employ the generic term “*la procédure*” as used in article 68 (3) but “*procédures pénales*”, which does not occur elsewhere in the Statute up to that point. Given the specificity of the terminology used in this article and its location, the Chamber considers that a general principle of interpretation of the Statute as a whole cannot be inferred from this single example.

32. Moreover, the Chamber observes that in a number of instances the terms “proceedings” and “*la procédure*” seem to include the investigation stage. The Chamber notes that in Part 2 of the Statute, entitled “Jurisdiction, Admissibility and Applicable Law”, both the English and French versions of article 17 use the term “proceedings” several times in paragraphs 2 and 3 in a manner that seems to cover the investigation stage, which is expressly mentioned in paragraph 1 of the same article.<sup>38</sup>

33. In Part 5 of the Statute entitled “Investigation and Prosecution”, the term “proceedings” is used for the first time in article 54 (3) (e) regarding the possibility of the Prosecutor’s agreeing not to disclose “at any stage of the proceedings” information obtained on the condition of confidentiality. The Chamber considers that this term clearly refers to the investigation stage, since issues of disclosure may arise in the course of the investigation<sup>39</sup> and the Prosecutor’s undertaking not to disclose information obtained on condition of

<sup>35</sup> The word “proceedings” occurs over 40 times in the English version of the Statute.

<sup>36</sup> The word “*procédure*” occurs over 50 times in the French version of the Statute.

<sup>37</sup> In French the word is used in the singular and sometimes in the plural. The English and French versions are not entirely consistent as regards the terminology used in this area.

<sup>38</sup> In articles 19 (11) and 20 (3) of the Statute, the French and English versions refer to proceedings which seem to include the investigation stage. See also article 17 of the Statute in this regard.

<sup>39</sup> For example, when the Prosecutor informs the Pre-Trial Chamber pursuant to article 56 (1) of the Statute or when the Prosecutor files an application pursuant to article 57 (3) (a) or (d) of the Statute.

confidentiality must be applied at the investigation stage, unless the Prosecutor's undertaking no longer serves any purpose.

34. The term "*la procédure*" is also used in article 56 (1) (b) and (2) of the Statute concerning the role of the Pre-Trial Chamber in the case of a unique investigative opportunity. It would seem very difficult in such circumstances to draw a distinction between the notions of investigation and proceedings.

35. Turning to the Rules of Procedure and Evidence, the Prosecutor argues that a distinction may be made between "investigation" and "proceedings" in two instances: rule 49 (1) and rule 111. The Chamber notes that the French version of these rules differs from the English version and does not contain exactly the same distinction between "investigation" and "proceedings". The French version of rule 111 uses the same terms as the title of Chapter 5 of the Rules in the phrase "*d'une enquête ou de poursuites*", whereas rule 49 refers to "*des enquêtes ou des procédures*" in the plural. The Chamber notes also that the rule that follows (rule 50) uses the term "*procédure*" three times, in the title and in sub-rules 4 and 6. Again, the rule that follows rule 111 (rule 112), which clearly refers to questioning during the investigation stage, uses the term "*procédure*" twice (rule 112 (4) and (5)).

36. The Chamber notes that the term "proceedings" in the English version of the Rules and the term "*la procédure*" in the French version are used over 120 times.

37. Chapter 4 of the Rules entitled "Provisions relating to various stages of the proceedings" precedes the chapters entitled "Investigation and prosecution", "Trial procedure", "Penalties" and "Appeal and revision", reflecting a logical progression in the proceedings before the Court. The Chamber also notes that rule 89 entitled "Applications for participation of victims in the proceedings", in Section III of Chapter 4 mentioned above, contains provisions<sup>40</sup> that are applicable to the investigation stage. Moreover, Section IV of the chapter, entitled "Miscellaneous provisions",<sup>41</sup> also relates to the investigation stage. Furthermore, rule 103 entitled "Amicus curiae and other forms of submission", which relates

<sup>40</sup> Provisions such as the definition of victims (rule 85) and the general principle set out in rule 86 of the Rules.

<sup>41</sup> Rule 100 (2) is applicable at any time "after the initiation of an investigation". Rules 101 and 102 are general principles applicable to the investigation stage.

to “any stage of the proceedings” and any chamber of the Court, has already been applied by the Chamber to the investigation stage regarding the DRC.<sup>42</sup>

38. In the light of the foregoing, the Chamber considers that the term “proceedings” does not necessarily exclude the stage of investigation of a situation. On the contrary, a number of provisions include the stage of investigation of a situation within the meaning of the term “*la procédure*”.

## 2. *The contextual argument*

39. The Office of the Prosecutor also bases its opposition to the applicability of article 68 (3) of the Statute to the stage of investigation of a situation on a twofold contextual argument. First, the Office of the Prosecutor emphasises that:

The drafting history of Article 68 and the relevant Rules confirms that the right of victims to participate under Article 68 was firstly seen as a right to participate in proceedings relating to a trial. Even though Rule 89 is found in Chapter 4 of the Rules which is entitled “Provisions relating to various stages of the proceedings”, it is important to note that Article 68 is in Part 6 of the Statute which is entitled “The Trial”.<sup>43</sup>

40. Second, the Office of the Prosecutor argues that rule 92 of the Rules of Procedure and Evidence limits the participation of victims to the stages mentioned in sub-rules 2 and 3 of that rule. This interpretation implies that the right of victims to participate in the proceedings is limited to certain proceedings which are triggered either by the Prosecutor’s “decision not to investigate or to prosecute under Article 53” (rule 92 (2)) or by the Chamber’s “decision to hold a confirmation hearing under Article 61” (rule 92 (3)).<sup>44</sup>

41. The Chamber will examine first (a) the location of article 68 in the Statute and subsequently (b) the scope of rule 92 of the Rules.

### (a) **The location of article 68 in the Statute**

42. With regard to the first argument, the Chamber observes that Part 6 of the Statute, entitled “The Trial”, contains both articles concerning the conduct of the proceedings before

<sup>42</sup> “Decision inviting certain NGO representatives to submit observations on the protection of victims and of human rights organisations active in the east of the Democratic Republic of Congo (Rule 103)”, 14 June 2005, No. ICC-01/04-37-Conf-tEN.

<sup>43</sup> The Prosecution’s reply, para. 18.

<sup>44</sup> *Ibid.*, para. 16.

the Trial Chamber<sup>45</sup> and articles establishing general principles applicable to the different stages of the proceedings before the Court.<sup>46</sup>

43. In this regard, the Chamber observes that articles 69 to 72 of the Statute, which are located in Part 6, lay down general principles applicable to the different stages of the proceedings. Article 69, which deals with evidence, and articles 70 and 71, which deal with offences against the administration of justice and sanctions for misconduct before the Court, relate to different stages of the proceedings. The offences described in article 70 (1) may occur during the investigation stage. Article 72, which deals with the “Protection of national security information” refers expressly, in paragraphs 1, 4 and 5, to the different stages of the proceedings, including the investigation stage.<sup>47</sup>

44. The Chamber notes that these articles are generally applicable to the different stages of the proceedings before the Court, including the investigation stage.

45. The Chamber observes that article 68 is entitled “Protection of the victims and witnesses and their participation in the proceedings”. The Chamber considers that paragraph 1 of article 68, which imposes on the Court a general obligation to “take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses”, refers in particular to the investigation stage. The Chamber also notes the absence of any explicit exclusion of the investigation stage from the scope of application of paragraph 3 of article 68 on the question of victims’ participation.

46. It is therefore systematically consistent with the above-mentioned provisions to interpret the term “*procedure*” in the French version and “proceedings” in the English version of article 68 (3) of the Statute as including the stage of investigation of a situation, and therefore as giving victims a general right of access to the Court at this stage, subject to the conditions laid down in that regard. This analysis is also consistent with the fact that article 68 (1) refers specifically to the investigation stage.

#### **(b) The scope of rule 92 of the Rules of Procedure and Evidence**

47. With regard to the Prosecutor’s argument pertaining to rule 92 of the Rules of Procedure and Evidence, the Chamber must point out that, pursuant to article 51 (5) of the

<sup>45</sup> See articles 63, 64, 65, 74, 75 and 76 of the Statute.

<sup>46</sup> See articles 69, 70, 71, 72 and 73 of the Statute.

<sup>47</sup> See the reference to article 56 of the Statute, which is intended to be applicable to the investigation stage.

Statute, the Rules of Procedure and Evidence is an instrument that is subordinate to the Statute. It follows that a provision of the Rules cannot be interpreted in such a way as to narrow the scope of an article of the Statute.<sup>48</sup>

48. The Chamber considers that, in the context of the above-mentioned regime governing victims' participation, sub-rule 2 of rule 92 is a rule concerning notification of the Prosecutor's "decision not to investigate or to prosecute under Article 53". Moreover, the Chamber notes that rule 92 (2) refers *in fine* to the eventuality that "[t]he Chamber may order the measures outlined in sub-rule 8 if it considers it appropriate in the particular circumstances" by requesting the Registrar to take necessary measures to give adequate publicity to the proceedings. The Chamber also notes that rule 92 (3) is a rule concerning notification of a "decision to hold a hearing to confirm charges pursuant to article 61".

49. The Chamber concludes that rule 92 is a notification rule and that it cannot limit the participation of victims to the stages mentioned in sub-rules 2 and 3 of the rule.

### 3. *The teleological argument*

50. The interpretation of article 68 (3) as being applicable to the investigation stage is also consistent with the object and purpose of the victims participation regime established by the drafters of the Statute, which ensued from a debate that took place in the context of the growing emphasis placed on the role of victims by the international body of human rights law and by international humanitarian law.<sup>49</sup>

51. In the Chamber's opinion, the Statute grants victims an independent voice and role in proceedings before the Court. It should be possible to exercise this independence, in particular, vis-à-vis the Prosecutor of the International Criminal Court so that victims can present their interests. As the European Court has affirmed on several occasions, victims participating in criminal proceedings cannot be regarded as "either the opponent – or for that

<sup>48</sup> The Chamber further recalls that when adopting the Rules of Procedure and Evidence in September 2002, the Assembly of States Parties appended the following explanatory note: "The Rules of Procedure and Evidence are an instrument for the application of the Rome Statute of the International Criminal Court, to which they are subordinate in all cases. [...]" *Assembly of States Parties to the Rome Statute of the International Criminal Court, First Session*, New York, 3-10 September 2002, ICC-ASP/1/3, p. 10.

<sup>49</sup> W.A. Schabas, *An Introduction to the International Criminal Court*, Cambridge, Cambridge University Press, 2nd edn, 2004, p. 172.

matter necessarily the ally – of the prosecution, their roles and objectives being clearly different”.<sup>50</sup>

52. Furthermore, the Chamber notes, with regard to systems in which victims are authorised to participate in criminal proceedings,<sup>51</sup> that the European Court of Human Rights has applied article 6 (1) of the European Convention on Human Rights to victims from the investigation stage, even before confirmation of the charges, particularly where the outcome of the criminal proceedings is of decisive importance for obtaining reparations for the harm suffered.<sup>52</sup>

53. The Inter-American Court of Human Rights reached the same conclusion in the *Blake* case,<sup>53</sup> in which it applied article 8 (1) of the American Convention on Human Rights to victims participating in criminal proceedings from the investigation stage. The Inter-American Court decided that it was clear from the terms of article 8 of the Convention that victims of human rights violations or their relatives are entitled to take steps during criminal proceedings, from the investigation stage and prior to confirmation of the charges,<sup>54</sup> to have

<sup>50</sup> European Court of Human Rights, *Berger v. France*, “Judgment”, 3 December 2002, Application No. 48221/99, para. 38; European Court of Human Rights, Grand Chamber, *Perez v. France*, “Judgment”, 12 February 2004, Application No. 47287/99, para. 68.

<sup>51</sup> Systems under which victims are not entitled to participate in criminal proceedings have other arrangements for giving them access to justice. For example, in England and Wales, in addition to victims’ right to obtain reparations under the *Criminal Injuries Compensation Act* of 8 November 1995 (UK ST 1995 c 53 s 1, amended on 1 July 1999), the Home Office published the *Code of Practice for Victims of Crime* on 18 October 2005 (which will enter into force in April 2006 and which replaces the *Victims Charter*, adopted in 1991 and amended in 1996), a document which accords victims of crimes rights before the law for the first time. The Code sets out the benefits that victims may expect from the criminal justice system, including the right to be notified within specific time limits of progress in the investigation of crimes committed against them (sections 5.9 to 5.12), the right to be notified of any arrest (sections 5.14 to 5.17) and the right to be informed of the status of cases before the courts (sections 5.18 to 5.35 and chapters VII and VIII). Moreover, in Ireland, in addition to victims’ right to institute proceedings for reparations under the *Garda Síochána Compensation Act* of 7 August 1941 (No. 19, as amended on 21 February 1945), the *Criminal Justice Act* of 27 July 1993 (6/1993, sections 6 to 9) and the *Non-Statutory Scheme of Compensation for Personal Injuries Criminally Inflicted* (introduced in 1974 and amended in 1986), the *Charter for Victims of Crime*, promulgated in 1999 by the Ministry of Justice, Equality and Law Reform, also contains specific provisions aimed at keeping victims informed of action taken on their complaints, on the status of criminal proceedings and on their outcome.

<sup>52</sup> European Court of Human Rights, *Moreira de Azevedo v. Portugal*, “Judgment”, 23 October 1990, Series A No. 189; European Court of Human Rights, *Tomasi v. France*, “Judgment”, 27 August 1992, Series A No. 241-A; European Court of Human Rights, *Acquaviva v. France*, “Judgment”, 21 November 1995, Series A No. 333-A; European Court of Human Rights, *Selmouni v. France*, “Judgment”, 28 July 1999, Application No. 25803/94; European Court of Human Rights, *Calvelli and Ciglio v. Italy*, “Judgment”, 17 January 2002, Application No. 32967/96; European Court of Human Rights, Grand Chamber, *Perez v. France*, “Judgment”, 12 February 2004, Application No. 47287/99 ; European Court of Human Rights, *Antunes Rocha v. Portugal*, “Judgment”, 31 May 2005, Application No. 64330/01.

<sup>53</sup> Inter-American Court of Human Rights, *Blake v. Guatemala*, “Judgment”, 24 January 1998, Series C No 36. The Inter-American Court consistently reaffirmed this case law subsequently: see R. Aldana-Pindell, ‘An emerging universality of justiciable victims’ rights in the criminal process to curtail impunity for state-sponsored crimes’, *Human Rights Quarterly*, Vol. 26, No. 3, August 2004, p. 605.

<sup>54</sup> Inter-American Court of Human Rights, *Blake v. Guatemala*, “Judgment”, 24 January 1998, Series C, No. 36, para. 97.



the facts clarified and the perpetrators prosecuted, and are entitled to request reparations for the harm suffered.<sup>55</sup> The Chamber considers that article 68 (3) of the Statute also gives victims the right to participate in the fight against impunity.

54. Having presented its terminological, contextual and teleological arguments, the Chamber finds that article 68 (3) is applicable to the stage of investigation of a situation.

**B. The conditions of application of article 68 (3) during the stage of investigation of a situation**

55. The Chamber notes that, pursuant to article 68 (3), the Court shall permit the views and concerns of victims to be presented and considered “[w]here the personal interests of the victims are affected” and “at stages of the proceedings determined to be appropriate by the Court”.

*1. The appropriateness of the participation of victims at the investigation stage*

56. The Office of the Prosecutor considers that it would be inappropriate for victims to participate at the investigation stage for two reasons:

Firstly, allowing for third party intervention at the investigation stage could jeopardize the appearance of integrity and objectivity of the investigation [...]. Secondly, participation in an investigation could be seen as necessarily entailing disclosure of the scope and nature of the investigation. The Prosecution submits that it is inconsistent with basic considerations of efficiency and security to disclose these details to third parties during an ongoing investigation.<sup>56</sup>

57. The Chamber considers that the participation of victims during the stage of investigation of a situation does not *per se* jeopardise the appearance of integrity and objectivity of the investigation, nor is it inherently inconsistent with basic considerations of efficiency and security.

58. The Chamber believes that the core consideration, when it comes to determining the adverse impact on the investigation alleged by the Office of the Prosecutor, is the extent of the victim’s participation and not his or her participation as such.

59. In this regard, the Chamber considers that giving persons with the status of victims the right to present in general terms their views and concerns regarding the investigation of a

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<sup>55</sup> Inter-American Court of Human rights, *Villagrán-Morales et al. v. Guatemala*, “Judgment”, 19 November 1999, Series C No. 63, para. 227.

<sup>56</sup> The Prosecution’s reply, para. 30.

situation and to submit material to the Pre-Trial Chamber cannot have an adverse impact on the investigation. This procedural right does not entail giving access to the “record of the investigation” nor does it affect the Prosecutor’s capacity to conduct the investigation in conformity with the requirements of the Statute and in particular article 54 (1) (a).

60. If the Chamber decides to give victims the right to participate in specific procedural activities, it will take such measures as are necessary, under articles 56 and 57 of the Statute, to preserve the integrity of the proceedings.<sup>57</sup>

*2. The criterion of “personal interests” within the meaning of article 68 (3) of the Statute*

61. Pursuant to article 68 (3) of the Statute, victims can participate only “[w]here the personal interests of the victims are affected”.

62. The Chamber notes that this criterion is not included in other provisions that give victims specific rights of participation, such as articles 15 (3) and 19 (3) of the Statute. These articles accord a specific right of participation to victims. The Chamber submits that the “personal interests” criterion expressly set out in article 68 (3) constitutes an additional criterion to be met by victims, over and above the victim status accorded to them.

63. The Chamber considers that the personal interests of victims are affected in general at the investigation stage, since the participation of victims at this stage can serve to clarify the facts, to punish the perpetrators of crimes and to request reparations for the harm suffered.

64. However, this general assessment, pertaining to the scope of the application filed with the Court which relates to the whole of the proceedings before it, does not rule out the possibility of a more specific assessment of victims’ personal interests based on the applications filed by victims in accordance with the modalities of the participation of victims in the proceedings set out below. Where the Chamber is seized, as in the present case, of an application to participate in the remainder of the proceedings to which no application or request for relief is appended, the Chamber must rule on the request, taking into account the stage of the proceedings at which the application is filed and the fact that the personal interests of the victims are affected by the conduct of the proceedings during the stage in which the victims wish to participate.

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<sup>57</sup> Such responsibility is entrusted to the Pre-Trial Chamber by the Statute, particularly article 56 (1) (b).



### C. The modalities of participation of victims in the proceedings at the investigation stage

65. The Chamber considers that the Statute, the Rules of Procedure and Evidence and the Regulations of the Court draw a distinction between situations and cases in terms of the different kinds of proceedings, initiated by any organ of the Court, that they entail.<sup>58</sup> Situations, which are generally defined in terms of temporal, territorial and in some cases personal parameters, such as the situation in the territory of the Democratic Republic of the Congo since 1 July 2002, entail the proceedings envisaged in the Statute to determine whether a particular situation should give rise to a criminal investigation<sup>59</sup> as well as the investigation as such. Cases, which comprise specific incidents during which one or more crimes within the jurisdiction of the Court seem to have been committed by one or more identified suspects, entail proceedings that take place after the issuance of a warrant of arrest or a summons to appear.<sup>60</sup>

66. In the light of this distinction, the Chamber considers that, during the stage of investigation of a situation, the status of victim will be accorded to applicants who seem to meet the definition of victims set out in rule 85 of the Rules of Procedure and Evidence in relation to the situation in question. At the case stage, the status of victim will be accorded only to applicants who seem to meet the definition of victims set out in rule 85 in relation to the relevant case.

67. The Chamber notes that, according to regulation 86 (2) (g) of the Regulations of the Court, when a natural or legal person makes an application to be accorded the status of victim, the applicant is required to provide, to the extent possible, “[i]nformation on the stage of the proceedings in which the victim wishes to participate”.<sup>61</sup> It follows that where any natural or legal person applying for the status of victim in respect of a situation also requests to be accorded the status of victim in any case ensuing from the investigation of such a situation,

<sup>58</sup> The term “situation” is used, *inter alia*, in articles 13 (a) and (b), 14 (1), 15 (5) and (6), 18 (1) and 19 (3) of the Statute.

<sup>59</sup> D. Nserenko, in O. Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court* (Nomos Verlagsgesellschaft, Baden-Baden, 1999), article 18, p. 398.

<sup>60</sup> C.K. Hall, in O. Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court* (Nomos Verlagsgesellschaft, Baden-Baden, 1999), article 19, pp. 407 and 408.

<sup>61</sup> See also the application form approved by the Presidency pursuant to regulation 23 of the Regulations of the Court.

the Chamber automatically takes this second request into account as soon as such a case exists, so that it is unnecessary to file a second application.<sup>62</sup>

68. With regard to the applications currently under consideration, the Chamber notes that, for the time being, no case has been initiated through the issuance of a warrant of arrest or a summons to appear by the Chamber under article 58 of the Statute in the light of the investigation of the situation in the territory of the DRC under way since 1 July 2002. At this stage, therefore, the Chamber can accord the status of victim only in connection with the situation in the DRC. As the applicants have applied to be accorded the status of victim “at the investigation, trial or sentencing stage”,<sup>63</sup> once a case ensues from the investigation of the DRC situation, the Chamber will automatically address the question of whether the applicants seem to meet the definition of victims set out in rule 85 of the Rules in connection with such a case.

69. If the applicants were to meet the conditions set out below for obtaining the status of victims during the current stage of the investigation of the DRC situation, the procedural rights that they would be entitled to exercise during such an investigation in accordance with article 68 (3) of the Statute would be as follows.

70. With regard to the modalities of the participation of victims in the proceedings, the Chamber must ensure that their participation is not prejudicial to or inconsistent with the rights of the Defence. In this instance, the Chamber decided to appoint an ad hoc counsel to represent the interests of the Defence.<sup>64</sup>

71. In the light of the core content of the right to be heard set out in article 68 (3) of the Statute, persons accorded the status of victims will be authorised, notwithstanding any specific proceedings being conducted in the framework of such an investigation, to be heard by the Chamber in order to present their views and concerns and to file documents pertaining to the current investigation of the situation in the DRC. With regard to article 68 (3), the Chamber considers that it imposes an obligation on the Court vis-à-vis victims. The use of the

<sup>62</sup> The filing of a separate application will be necessary only to obtain the procedural status of victim for reparation proceedings pursuant to rules 94 and 99 of the Rules and regulation 88 of the Regulations of the Court.

<sup>63</sup> Application for participation of VPRS-1 (ICC-01/04-25CONF-Exp-tEN), p. 3; Application for participation of VPRS-2 (ICC-01/04-26CONF-Exp-tEN), p. 3; Application for participation of VPRS-3 (ICC-01/04-27CONF-Exp-tEN), p. 3; Application for participation of VPRS-4 (ICC-01/04-28CONF-Exp-tEN), p. 3; Application for participation of VPRS-5 (ICC-01/04-29CONF-Exp-tEN), p. 3; and Application for participation of VPRS-6 (ICC-01/04-30CONF-Exp-tEN), p. 3.

<sup>64</sup> “Decision on protective measures requested by Applicants 01/04-1/dp to 01/04-6/dp”, 22 July 2005, No. ICC-01/04-72-Conf, p. 6.

present tense in the French version of the text (“la Cour permet”)<sup>65</sup> makes it quite clear that the victims’ guaranteed right of access to the Court entails a positive obligation for the Court to enable them to exercise that right concretely and effectively. It follows that the Chamber has a dual obligation: on the one hand, to allow victims to present their views and concerns, and, on the other, to examine them.

72. The right to present their views and concerns and to file material pertaining to the ongoing investigation stems from the fact that the victims’ personal interests are affected because it is at this stage that the persons allegedly responsible for the crimes from which they suffered must be identified as a first step towards their indictment. The close link between the personal interests of the victims and the investigation is even more important in the regime established by the Rome Statute, given the effect that such an investigation can have on future orders for reparations pursuant to article 75 of the Statute.

73. With regard to specific proceedings relating to the investigation of the DRC situation, the Chamber has identified three scenarios. First, when specific proceedings are initiated *proprio motu* by the Pre-Trial Chamber under article 56 (3) and article 57 (3) (c) of the Statute,<sup>66</sup> the Chamber will decide at the time of initiation of such proceedings whether persons having the status of victims may participate in them. In reaching such a decision, the Chamber will take into account the impact that such specific proceedings could have on their personal interests.

74. Second, when specific proceedings are initiated by the Office of the Prosecutor or by counsel representing the general interests of the Defence, the Chamber will make a distinction between proceedings that must be conducted confidentially or in closed session and public proceedings. In the latter case, persons having the status of victims will be entitled to participate unless the Chamber decides otherwise after determining the impact that such proceedings might have on their personal interests. In the case of other specific proceedings that must remain confidential, persons having the status of victims will not be entitled to participate unless the Chamber decides otherwise in the light of the impact of such proceedings on their personal interests.

75. Third, persons having the status of victims will also be entitled to request the Pre-Trial Chamber, pursuant to article 68 (3) of the Statute, to order specific proceedings. The Chamber

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<sup>65</sup> The English version reads “The Court shall permit”.

<sup>66</sup> The Chamber may also initiate other proceedings *proprio motu*, for example in pursuance of rule 103 of the Rules.

will rule on such applications on a case-by-case basis after assessing their impact on the personal interests of the applicants.

76. Furthermore, pursuant to rule 92 (5) of the Rules of Procedure and Evidence, applicants are entitled to be notified of proceedings before the Court, including the date of hearings and any postponement thereof, and the date of delivery of the decision. Pursuant to the same rule, applicants are also notified of requests, submissions, motions and other documents relating to such specific proceedings, where they are held in public or where persons having the status of victims are authorised to participate. Accordingly, the applicants will not be given access for the time being to any non-public document contained in the record of the situation in the DRC.

### III. ON WHETHER THE VICTIMS IN THE PRESENT INSTANCE HAVE THE STATUS REQUIRED FOR PARTICIPATION IN THE PROCEEDINGS

#### A. Applicable law and method of examination

##### 1. Rule 85 (a)

77. Rule 85 defines the term “victim” as follows:

(a) “Victims” means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court;

(b) Victims may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.

78. Rule 85, sub-rule (b), refers to “organizations or institutions” and is not applicable in this case since the applications are not from institutions or organisations.

79. Rule 85, sub-rule (a), establishes four criteria that have to be met in order to obtain the status of victim: the victim must be a natural person; he or she must have suffered harm; the crime from which the harm ensued must fall within the jurisdiction of the Court; and there must be a causal link between the crime and the harm suffered. Accordingly, the Chamber must answer four main questions:

- Are the Applicants natural persons?
- Have they suffered harm?
- Do the crimes alleged by the Applicants fall within the jurisdiction of the Court?
- Is there a causal link between these crimes and the harm suffered by the Applicants?

### (a) The “natural person” criterion

80. The ordinary meaning of the term “natural person”, as it appears in rule 85 (a), is in French “[un] être humain tel qu’il est considéré par le droit; la personne humaine prise comme sujet de droit, par opposition à la personne morale”,<sup>67</sup> or, in English, “a human being”.<sup>68</sup> A natural person is thus any person who is not a legal person.<sup>69</sup>

### (b) The notion of harm

81. The term “harm” is not defined either in the Statute or in the Rules. In the absence of a definition, the Chamber must interpret the term on a case-by-case basis in the light of article 21 (3) of the Statute, according to which “[t]he application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights”.

82. With regard to the more specific question of determining the harm suffered by the victims, Pre-Trial Chamber I notes that the purpose of this decision is not to make a definitive determination of the harm suffered by the victims, as this will be determined subsequently, where appropriate, by the Trial Chamber in the context of a case. Pre-Trial Chamber I considers, moreover, that the determination of a single instance of harm suffered is sufficient, at this stage, to establish the status of victim.

### (c) Do the crimes fall within the jurisdiction of the Court?

83. To begin with, the Chamber notes that, pursuant to article 13 of the Statute, the Court may exercise its jurisdiction with respect to a crime referred to in article 5 if:

<sup>67</sup> G. Cornu, *Vocabulaire juridique*, Paris, Quadrige/PUF, 2003, p.653.

<sup>68</sup> *Black’s Law Dictionary* gives the following definition: “So far as legal theory is concerned, a person is any being whom the law regards as capable of rights and duties. Any being that is capable is a person, whether a human being or not and not being that is not so capable is a person, even though he be a man. Persons are the substances of which rights and duties are the attributes. It is only in this respect that persons possess juridical significance, and this is the exclusive point of view from which personality receives the legal recognition.” See John Salmond, *Jurisprudence* 318 (Glanville L. Williams ed., 10<sup>th</sup> edn 1947), cited in B. A. Garner, *Black’s Law Dictionary*, St. Paul, Minnesota, West Group, 2004, p. 1178.

<sup>69</sup> See the definition of “*personne morale*” [legal person] given by the dictionary *Le nouveau PETIT ROBERT*: “groupement de personnes ou établissement titulaire d’un patrimoine collectif et doté de droits et d’obligations, mais n’ayant pas d’existence corporelle”, *Le nouveau PETIT ROBERT, Dictionnaire alphabétique et analogique de la langue*, Paris, Dictionnaires Le Robert, 2003, p. 1913. A “*personne morale*” may also be defined as a “groupement doté, sous certaines conditions, d’une personnalité juridique plus ou moins complète; [un] sujet de droit fictif qui, sous l’aptitude commune à être titulaire de droit et d’obligation, est soumis à un régime variable, notamment selon qu’il s’agit d’une personne morale de droit privé ou d’une personne morale de droit public”, G. Cornu *Vocabulaire juridique*, Paris, Quadrige/PUF, 2003, p. 653. See also the synonyms of legal person given by *Black’s Law Dictionary*: “fictitious person; juristic person; legal person; moral person”, and its definition of an “artificial person”: “an entity, such as a corporation, created by law and given certain legal rights and duties of a human being; a being, real or imaginary, who for the purpose of legal reasoning is treated more or less as a human being”, B. A. Garner, *Black’s Law Dictionary*, St. Paul, Minnesota, West Group, 1999, p. 1162.

- (a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;
- (b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or
- (c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.

84. The Chamber notes that the situation under way in the territory of the DRC since 1 July 2002 was referred to the Prosecutor on 3 March 2004 by the President of the DRC, in accordance with articles 13 (a) and 14 of the Statute.<sup>70</sup> The referral letter is clear on this point, since the President of the RDC announces in it his referral to the Court of “the situation in [his] country”.<sup>71</sup> On receiving that letter, the Prosecutor decided, on 16 June 2004, to initiate an investigation in the territory of the DRC.<sup>72</sup> Moreover, no notification of the kind referred to in article 18, paragraph 2, of the Statute was received.<sup>73</sup>

85. To fall within the Court’s jurisdiction, a crime must meet the following conditions: it must be one of the crimes mentioned in article 5 of the Statute, that is to say, the crime of genocide, crimes against humanity and war crimes;<sup>74</sup> the crime must have been committed within the time period laid down in article 11 of the Statute; and the crime must meet one of the two alternative conditions described in article 12 of the Statute.

86. With regard to the first condition, crimes falling within the jurisdiction of the Court are set out in detail in articles 6, 7 and 8 of the Statute. It will be for the Chamber to analyse the statements of each Applicant in the light of these articles and to determine whether the crimes described can fall within the jurisdiction of the Court.

87. With regard to the second criterion, article 11 of the Statute stipulates that:

1. The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute.
2. If a State becomes a Party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the

<sup>70</sup> Cf. letter of referral dated 3 March 2004. “Prosecutor’s Request for Measures under Article 56”, 25 April 2005, ICC-01/04-17-Conf., Annex 1.

<sup>71</sup> Ibid.

<sup>72</sup> ICC-01/04-20-Conf, para. 4 ; ICC-01/04-18-Conf, p. 3.

<sup>73</sup> ICC-01/04-18-Conf, p. 3.

<sup>74</sup> Article 5 (2) of the Statute reads: “The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime.”

entry into force of this Statute for that State, unless that State has made a declaration under article 12, paragraph 3.

88. The Chamber notes that the Statute entered into force for the RDC on 1 July 2002, in conformity with article 126 (1) of the Statute, the RDC having ratified the Statute on 11 April 2002.

89. In order to determine whether the crimes alleged by the Applicants were committed after 1 July 2002, the Court takes note of the dates on which the crimes alleged by the Applicants were committed:

1. VPRS 1 mentions crimes allegedly committed REDACTED 2002;
2. VPRS 2 mentions crimes allegedly committed REDACTED 2002;
3. VPRS 3 mentions crimes allegedly committed REDACTED 2002;
4. VPRS 4 mentions crimes allegedly committed REDACTED 2003;
5. VPRS 5 mentions crimes allegedly committed REDACTED 2003;
6. VPRS 6 mentions crimes allegedly committed REDACTED 2002.

90. The Chamber notes from a reading of the Applicants' statements that the crimes were committed after 1 July 2002; the second condition has therefore been met.

91. With regard to the third condition, article 12 (2) stipulates that:

In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:

- (a) The State on the territory of which the conduct in question occurred or [...];
- (b) The State of which the person accused of the crime is a national.

92. The Court takes note of the locations in which the crimes described by the Applicants were allegedly committed:

1. VPRS 1 mentions crimes allegedly perpetrated, in particular, REDACTED, in Ituri, in Orientale Province of the DRC;
2. VPRS 2 mentions crimes allegedly perpetrated REDACTED, in Ituri, in Orientale Province of the DRC;
3. VPRS 3 mentions crimes allegedly perpetrated, in particular, REDACTED, in North Kivu in the DRC;
4. VPRS 4 mentions crimes allegedly perpetrated REDACTED, in Ituri, in Orientale Province of the DRC;
5. VPRS 5 mentions crimes allegedly perpetrated REDACTED, in Ituri, in Orientale Province of the DRC;
6. VPRS 6 mentions crimes allegedly perpetrated REDACTED, in Ituri, in Orientale Province of the DRC.

93. The Chamber notes that, in the light of the Applicants' statements, the crimes were committed on the territory of the DRC. Given that the criteria laid down in article 12 (2) of the Statute are alternative, the Chamber finds that the Court may exercise its jurisdiction. As

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the crimes were committed on the territory of a State Party, it is unnecessary to determine the nationality of the persons who may be charged. The Chamber therefore finds that the third condition has been met.

**(d) The causal link between the crimes falling within the jurisdiction of the Court and the harm suffered**

94. The fourth criterion laid down in rule 85 (a), reflected in the words “as a result of”, is that of the causal link that must exist between a crime falling within the jurisdiction of the Court and the harm suffered by the Applicants. The Chamber therefore considers it necessary to establish that there are grounds to believe that the harm suffered is the result of the commission of crimes falling within the jurisdiction of the Court. However, the Chamber considers that it is not necessary to determine in any great detail at this stage the precise nature of the causal link and the identity of the person(s) responsible for the crimes.

*2. Method of examination*

95. The Chamber must define an examination criterion that will enable it to establish the burden of proof for future victims and their legal representatives. The Chamber reserves the right to reject applications for participation that it deems to be unfounded or incomplete.

96. The Chamber reserves the right in future to request additional information from victims and their legal representatives, basing itself on the statement in each application. The Chamber also reserves the right to request the Registry’s assistance in respect of the information contained in the Applicants’ statements. To that end, the Chamber will have to inform the Registry of the nature of this assistance in a separate decision from the present one.

**(a) Examination criterion**

97. The Chamber must define an examination criterion to determine whether the Applicants may be accorded the status of victim. However, no criterion for making such an assessment is to be found either in the Statute or in the Rules. The Chamber considers that, having regard to the present stage of the proceedings, i.e. that of investigation of the situation, it is reasonable to set a relatively low threshold.

98. To define this assessment criterion, the Chamber will borrow the criterion that exists at the same stage of the proceedings, i.e. the investigation stage, but which is applicable to the procedural rights of a person other than the victims. Thus, the Chamber finds that the criterion



used at the situation stage to accord procedural rights in the context of an investigation, i.e. article 55 (2) of the Statute, is that of “grounds to believe”. Moreover, the Chamber notes that as soon as a warrant of arrest is issued, the examination criterion is more restrictive. Thus, according to article 58 (1) (a) of the Statute, the Chamber shall issue a warrant of arrest if it is satisfied that “[t]here are reasonable grounds to believe” that the person concerned has committed a crime. Similarly, at the stage of confirmation of the charges, the criterion used by article 61 (7) of the Statute to determine whether the charges should be confirmed is even more restrictive. The Chamber determines whether there is sufficient evidence “to establish substantial grounds to believe” that the person committed a crime.

99. The Chamber is of the opinion that the term “grounds to believe” constitutes the least demanding criterion at the preliminary stage of the proceedings before the Court. In view of the discretion accorded to the Chamber by the Statute and the Rules, it considers that such a criterion may also be applicable to the procedural rights enjoyed by victims. The Chamber therefore concludes that at the situation stage, the status of victim may be accorded only to applicants in respect of whom it has “grounds to believe” that they meet the criteria set forth in rule 85 (a) of the Rules.

100. The Chamber accordingly considers that the criterion used is a non-exhaustive and non-definitive assessment of the above-mentioned criteria laid down in rule 85. Thus, the Applicants must demonstrate that there are grounds to believe that they have suffered harm as a result of a crime within the jurisdiction of the Court, such crime having allegedly been committed within the temporal and territorial limits of the relevant situation.<sup>75</sup>

### **(b) Stages of the examination**

101. In assessing the applications for participation, the Chamber will first examine each Applicant’s statement. It will then consider the arguments presented by ad hoc Defence counsel and the Prosecutor. The Chamber will draw on other sources such as official United Nations reports. The next step will not consist in assessing the credibility of the statement or engaging in a process of corroboration *stricto sensu* but rather in checking whether the victim’s account of the events is consistent with official reports (particularly United Nations reports). The Chamber can then assess whether there are “grounds to believe” that the criteria

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<sup>75</sup> The Prosecution’s reply, para. 7 (b): This is what the Prosecution refers to as a broader interpretation of the notion of victim when it states: “A broader interpretation is that a person is a ‘victim’ when related to the whole situation which is within the jurisdiction of the Court, no matter what the scope of the investigation or what cases are brought before the Court.”

laid down in rule 85 (a) of the Rules have been met. The Chamber stresses that it is for the victims and their legal representatives to furnish the requisite information in support of their application.

## **B. Analysis of the applications for participation**

### *1. Preliminary remarks*

102. To begin with, the Chamber notes that the forms used by the Applicants are FIDH forms. Regulation 86 (1) of the Regulations of the Court stipulates that “[t]hese standard forms shall, to the extent possible, be used by victims”. The Chamber thus finds that the use of such forms is not compulsory and that the Applicants are entitled to use FIDH forms. It should further be noted that the applications for participation transmitted by the FIDH contain the information required by regulation 86, sub-regulation 2, of the Regulations of the Court.

103. The Court also wishes to draw attention to the circumstances in which the applications for participation were obtained, since the signatures on some statements did not appear to match. At the 12 July 2005 hearing, the Chamber asked REDACTED<sup>76</sup> to confirm that each Applicant had signed his or her statement personally.<sup>77</sup> REDACTED solemnly confirmed before the Chamber that all the victims, even those who are illiterate, had signed the statements submitted to the Chamber.<sup>78</sup>

104. The Chamber notes that, according to ad hoc Defence counsel, the FIDH has no standing to “file any document on behalf of the victims”<sup>79</sup> inasmuch as it is not a natural person within the meaning of rule 89, sub-rule 3, and the Applicants are neither disabled nor children. In this regard, the Chamber considers first that the term “person” in rule 89, sub-rule 3, refers to both natural and legal persons because when the Statute and the Rules make a distinction between natural and legal persons, they generally mention this distinction explicitly.<sup>80</sup> It follows that the term “person” in the context of rule 89 does not seem to rule out “legal persons”. The Chamber therefore concludes that the applications for participation may be filed by the FIDH.

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<sup>76</sup> REDACTED.

<sup>77</sup> REDACTED.

<sup>78</sup> REDACTED.

<sup>79</sup> “Response by ad hoc defence counsel to the applications for participation by victims in the proceedings registered under Nos. 01/04-01/d.p.; 01/04-02/d.p.; 01/04-03/d.p.; 01/04-04/d.p.; 01/04-05-d.p.; 01/04-06-d.p.”, 11 August 2005, No. ICC-01/04-81-Conf, para. 28.

<sup>80</sup> See, for example, article 25 (1) of the Statute or Rule 85 (a) of the Rules.

105. With regard to the second component of ad hoc Defence counsel's argument to the effect that the Applicants are neither disabled nor children within the meaning of rule 89 (3), the Chamber notes that this provision refers to two circumstances. In the first case, it refers to the circumstance in which a victim's application may be made by another person who has obtained the victim's consent. In the second case, it refers to the circumstance in which a legally authorised person is allowed to act on behalf of a victim without having first obtained his or her consent, where the victim is a child or a disabled person and obtaining consent is impossible. The Chamber notes that all the applications were filed with the consent of the victims concerned, hence in conformity with the first circumstance referred to in rule 89 (3).

106. With regard to ad hoc Defence counsel's argument regarding the legal representative's lack of authority to act, particularly on behalf of VPRS 3 and VPRS 5,<sup>81</sup> the Chamber notes that the statements registered by the Registry as ICC-01/04-75-Conf and notified to ad hoc Defence counsel on 29 July 2005, were redacted and that this affected the pagination. However, the Chamber confirms that the Applicants' original documents, as initially registered by the Registry, mention the application for participation and the mandate given to the legal representative.

107. Lastly, with regard the question of recognition of the Applicants' status as victims, the legal representative refers to this in a general way without making any distinction between the different Applicants. He thus makes the following statement regarding the six applications for participation:

The applicants meet the conditions set out in the Statute and the Rules as: 1) they are natural persons; 2) in each case, a crime within the jurisdiction of the Court and within the scope of the "situation in the DRC" was committed; 3) in each case, the applicants suffered harm; 4) in each case, there is a causal link between the crime committed and the harm suffered. These four components appear clearly in the forms to which this memorandum is appended; it will therefore be sufficient just to refer back to them. It is now up to Pre-Trial Chamber I to accord the current applicant the status of victim, in accordance with rule 89 of the Rules of Procedure and Evidence, and to define the modalities of their participation.<sup>82</sup>

108. The Prosecutor has not presented arguments concerning the facts alleged by the victims, merely indicating that:

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<sup>81</sup> "Response by ad hoc defence counsel to the applications for participation by victims in the proceedings registered under Nos. 01/04-01/d.p.; 01/04-02/d.p.; 01/04-03/d.p.; 01/04-04/d.p.; 01/04-05-d.p.; 01/04-06-d.p.", 11 August 2005, No. ICC-01/04-81-Conf, paras. 37, 42 and 45.

<sup>82</sup> Memorandum in support, para. 5.

The Prosecution respectfully submits that, while the Applicants appear to qualify as victims under Rule 85 (a), their Applications for participation under Article 68 (3) are premature.<sup>83</sup>

109. This question is addressed only by ad hoc Defence counsel. The Chamber observes in this regard that as counsel has obtained only a portion of the statements, some of the arguments he raises regarding jurisdiction *ratione materiae* are inadmissible since they relate to the redacted and hence incomplete versions of the statements.

## 2. VPRS 1

### (a) Statement

110. VPRS 1 is a woman of Congolese nationality REDACTED.

111. VPRS 1 states REDACTED.

112. REDACTED.

### (b) Findings of the Chamber

113. As VPRS 1 is a natural person, the Chamber refers to the three other previously established criteria for determining her status as a victim within the meaning of rule 85 of the Rules.

114. With respect to harm suffered, VPRS 1 considers that the greatest harm she suffered was the loss of her husband, her REDACTED daughters and her nephews, and that the shock caused by these successive deaths has been insurmountable. She also considers that she suffered harm from the burning of her house and the looting of her property.

115. For the purpose of assessing the harm suffered, the Chamber notes that the “Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power”, adopted in 1985 by the United Nations General Assembly (the “1985 Declaration”),<sup>84</sup> and 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

<sup>83</sup> The Prosecution’s reply, para. 5.

<sup>84</sup> General Assembly resolution 40/34, 29 November 1985, fortieth session, United Nations document A/RES/40/34.

humanitarian law”, adopted by the Commission on Human Rights<sup>85</sup> (the “2005 Principles”), recognise “emotional suffering” and “economic loss” as forms of harm.<sup>86</sup>

116. Furthermore, the Chamber refers to the Inter-American Court of Human Rights and the European Court of Human Rights, which in their case law have repeatedly awarded reparations for harm due to emotional suffering or economic loss.<sup>87</sup> The Chamber notes in this connection that the European Court of Human Rights, in its judgment of 8 January 2004 in the *Ayder and Others v. Turkey* case,<sup>88</sup> awarded pecuniary damages in respect of the destruction of housing. Moreover, in its judgment in the *Keenan v. the United Kingdom* case of 3 April 2001,<sup>89</sup> the European Court awarded the victim non-pecuniary damages for the anguish and distress she had suffered on account of the conditions in which her son had been detained. The Chamber notes that, in accordance with internationally recognised human rights, emotional suffering and economic loss constitute harm within the meaning of rule 85 of the Rules.

117. The Chamber therefore considers that there are grounds to believe that VPRS 1 suffered harm that may be characterised at this stage as emotional suffering related to the loss of family members. The Chamber further considers that VPRS 1 suffered harm that may be characterised as economic loss on account of the looting and burning of her house.

118. The third question that the Chamber must address is whether or not a crime within the jurisdiction of the Court was committed. As indicated above,<sup>90</sup> the Chamber will focus on the Court’s jurisdiction *ratione materiae* in respect of the above-mentioned events.

<sup>85</sup> Commission on Human Rights, resolution 2005/35, 19 April 2005. See Commission on Human Rights, report on the sixty-first session: “Draft resolution and draft decisions recommended for adoption by the Economic and Social Council, and the resolutions and decisions adopted by the Commission at its sixty-first session”, 14 March – 22 April 2005, United Nations document, E/2005/23 (Part I), E/CN.4/2005/134 (Part I), pp. 136-142.

<sup>86</sup> General Assembly resolution 40/34, see above, para. 1 ; Commission on Human Rights, resolution 2005/35, see above, annex, para. 8.

<sup>87</sup> With regard to emotional suffering, see in particular: European Court of Human Rights, *Aksoy v. Turkey*, “Judgment”, 18 December 1996, Application No. 21987/93, para. 113; European Court of Human Rights *Selmouni v. France*, “Judgment”, 28 July 1999, Application No. 25803/94, para. 123; Inter-American Court of Human Rights, *Aloeboetoe et al. v. Suriname*, “Judgment/Reparations (Art. 63(1))”, 10 September 1993, Series C No. 15, para. 52; Inter-American Court of Human Rights, *Neira Alegría et al. v. Peru*, “Judgment/Reparations (Art. 63(1))”, 19 September 1996, Series C No. 29, para. 57. With regard to economic loss, see in particular: European Court of Human Rights, *Ayder and Others v. Turkey*, “Judgment”, 8 January 2004, Application No. 23656/94, paras. 141ff; Inter-American Court of Human Rights, *El Amparo v. Venezuela*, “Judgment/Reparations (Art. 63 (1))”, 14 September 1996, Series C No. 28, paras. 28 to 63.

<sup>88</sup> European Court of Human Rights, *Ayder and Others v. Turkey*, “Judgment”, 8 January 2004, Application No. 23656/94, paras. 10 and 141ff.

<sup>89</sup> European Court of Human Rights, *Keenan v. the United Kingdom*, “Judgment”, 3 April 2001, Application No. 27229/95, para. 138.

<sup>90</sup> See section (c), “Do the crimes fall within the jurisdiction of the Court?”, paras. 83–93.

119. VPRS 1's statement refers, in particular, to looting and a large-scale attack REDACTED by REDACTED militia, who "brutally attacked anyone not belonging to their ethnic group". The statement seems to be consistent with the conclusions of reports drawn up by certain United Nations bodies. REDACTED<sup>91</sup>:

REDACTED.<sup>92</sup>

120. Moreover, REDACTED:<sup>93</sup>

REDACTED.<sup>94</sup>

121. In her statement, REDACTED:

REDACTED.<sup>95</sup>

122. The Chamber takes note of ad hoc Defence counsel's comment to the effect that VPRS 1's statement does not indicate, even in passing, the circumstances of the death of the members of her family, except for her husband, or the number who died. He adds that although VPRS 1 claims to be both a victim and a witness, she was not present when the facts she reports occurred.

123. The Chamber notes that the crimes reported by VPRS 1, which appear to have been committed, are: the murder of her husband, the murder of REDACTED daughters and REDACTED nephews, the looting of her property and the destruction of her house. The Chamber notes that in her statement VPRS 1 gives a similar description of the relevant events mentioned in the above-mentioned reports, that is to say: the place (REDACTED), the date (REDACTED 2002), the ethnic group targeted by the crimes (REDACTED), the fact that militias carried out the attack and the type of acts perpetrated (murder and looting). The Chamber notes the above-mentioned argument of ad hoc Defence counsel but considers that, subject to re-examination of the matter under rule 91 (1) of the Rules and taking into account available information, there are grounds to believe that the crimes reported in the statement by VPRS 1 fall within the jurisdiction of the Court pursuant to articles 6 to 8 of the Statute, in particular articles 7 (1) (a) and/or 7 (1) (h), 8 (2) (c) (i) and/or 8 (2) (e) (i) and/or 8 (2) (e) (v).

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<sup>91</sup> REDACTED.

<sup>92</sup> REDACTED.

<sup>93</sup> REDACTED.

<sup>94</sup> REDACTED.

<sup>95</sup> REDACTED.

124. The Chamber also considers that there are grounds to believe that VPRS 1 suffered harm as a result of the commission of those crimes.

3. VPRS 2

(a) Statement

125. VPRS 2 is a man of Congolese nationality, REDACTED.

126. He states that REDACTED.

127. VPRS 2 reports REDACTED.

(b) Findings of the Chamber

128. As VPRS 2 is a natural person, the Chamber refers to the three other previously established criteria for determining the status of victim within the meaning of rule 85 of the Rules.

129. With regard to the harm suffered, VPRS 2 states that he lost REDACTED family members and, in material terms, all his property and his house. REDACTED. Ad hoc Defence counsel argues that the statement by VPRS 2 is vague and fails to indicate his degree of relationship with the deceased persons, although the terms “son” and “sister” are used. He points out that in Africa one may call a person “father”, “mother”, “brother” or “sister” without having any biological tie with the person concerned, and that the Chamber should demand to know exactly what the term “family member” means in this context. He further points out that the number of persons who died is not even roughly specified.

130. The Chamber takes note of the arguments of the Defence but points out that the method used here is a non-exhaustive and non-definitive assessment of the criteria laid down in rule 85 (a) of the Rules. The Chamber also notes that VPRS 2 stated that he had lost REDACTED family members and specified that they included his son and REDACTED sisters.

131. In assessing the harm suffered, the Chamber takes note of the 1985 Declaration and the 2005 Principles recognising “emotional suffering” and “economic loss” as forms of



harm.<sup>96</sup> The Chamber also draws attention again to the judgments of the European Court and the Inter-American Court that it mentioned in connection with the assessment of the harm suffered by VPRS I.<sup>97</sup>

132. The Chamber therefore considers that there are grounds to believe that VPRS 2 suffered harm that may be characterised at this stage as mental suffering linked to the loss of family members, particularly his son and REDACTED sisters, and economic loss due, in particular, to the burning of his houses.

133. With regard to the question of whether or not a crime within the jurisdiction of the Court was committed, the Chamber notes that VPRS 2 reports REDACTED. The Chamber notes that the REDACTED report REDACTED:

REDACTED.<sup>98</sup>

REDACTED.<sup>99</sup>

REDACTED.<sup>100</sup>

134. The crimes reported by VPRS 2, which seem to have been committed, are murders and the burning down of one or more houses. The Chamber notes that in his statement VPRS 2 provides a similar description of the relevant events referred to in the above-mentioned reports, that is to say: the place (REDACTED), the date (REDACTED 2002), the ethnic group targeted by the crimes (REDACTED), the fact that militias were responsible for the attack, the scale of the crimes (REDACTED) and the weapons used in the attacks (REDACTED). The Chamber considers that, subject to re-examination of the matter under rule 91 (1) of the Rules and taking into account available information, there are grounds to believe that these crimes fall within the jurisdiction of the Court pursuant to articles 6 to 8 of the Statute, in particular articles 7 (1) (a) and/or 7 (1) (h), 8 (2) (c) (i) and/or 8 (2) (e) (i).

135. The Chamber is furthermore satisfied that there are grounds to believe that VPRS 2 suffered harm as a result of the commission of the said crimes.

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<sup>96</sup> See the assessment of harm suffered by VPRS 1, paras. 115.116.

<sup>97</sup> Ibid.

<sup>98</sup> REDACTED.

<sup>99</sup> REDACTED.

<sup>100</sup> REDACTED.



#### 4. VPRS 3

##### (a) Statement

136. VPRS 3 is a man of Congolese nationality, REDACTED.

137. VPRS 3 states that REDACTED.

138. VPRS 3 states that REDACTED.

139. VPRS 3 states REDACTED.

140. VPRS 3 states that REDACTED.

141. He adds REDACTED.

142. VPRS 3 states that he suffered severe harm as a result of his abduction and enslavement, adding that he walked for some 500 kilometres carrying a heavy load, without eating or drinking. He reports that his feet were swollen from exhaustion.

##### (b) Findings of the Chamber

143. As VPRS 3 is a natural person, the Chamber refers to the three other previously established criteria for determining the status of victim within the meaning of rule 85 of the Rules.

144. With regard to the harm suffered, VPRS 3 considers that he suffered severe harm as a result of his abduction and enslavement. He claims he had to walk for some 500 kilometres carrying a heavy load without eating or drinking. He adds that his feet were swollen from exhaustion.

145. In assessing the harm suffered, the Chamber takes note of the 1985 Declaration and the 2005 Principles recognising “emotional suffering” and “physical suffering” as forms of harm.<sup>101</sup>

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<sup>101</sup> See the assessment of harm suffered by VPRS 1, paras. 115-116.

146. The Chamber also notes that the Inter-American Court and the European Court have awarded reparations for harm due to emotional suffering or physical suffering.<sup>102</sup> The Chamber further notes that in its *Velásquez Rodríguez v. Honduras* of 29 July 1998,<sup>103</sup> the Inter-American Court held that prolonged detention in specific circumstances was detrimental to physical and moral integrity, and hence a form of harm.

147. The Chamber therefore considers that there are grounds to believe that VPRS 3 suffered harm that may be characterised at this stage as emotional suffering and physical suffering related to his enslavement and detention.

148. With regard to the question of whether or not a crime within the jurisdiction of the Court was committed, the statement by VPRS 3 mentions the commission REDACTED of an abduction with bodily harm (whipping) and subsequently enslavement that lasted for several days. According to VPRS 3, this abduction REDACTED. The Chamber refers to the conclusions of the REDACTED report REDACTED.<sup>104</sup> With regard to the REDACTED:

REDACTED.<sup>105</sup>

REDACTED.<sup>106</sup>

REDACTED.<sup>107</sup>

REDACTED.<sup>108</sup>

149. Furthermore, with regard to the specific events described in the statement by VPRS 3, a previous report<sup>109</sup> states:

REDACTED.<sup>110</sup>

REDACTED.<sup>111</sup>

<sup>102</sup> With regard to emotional suffering, see in particular: Inter-American Court of Human Rights, *Neira Alegría et al. v. Peru*, “Judgment/Reparations (Art. 63 (1))”, 19 September 1996, Series C No. 29, para. 56; Inter-American Court of Human Rights, *Garrido and Baigorria v. Argentina*, “Judgment/Reparations (Art. 63 (1))”, 27 August 1998, Series C No. 39, para. 49; European Court of Human Rights, *Olsson v. Sweden*, “Judgment”, 24 March 1988, Application No. 10465/83, para. 102. With regard to physical suffering, see in particular: European Court of Human Rights, *X and Y v. the Netherlands*, “Judgment”, 26 March 1985, Application No. 8978/80, para. 22; European Court of Human Rights, *Y.F. v. Turkey*, “Judgment”, 22 July 2003, Application No. 24209/94, para. 33.

<sup>103</sup> Inter-American Court of Human Rights, *Velásquez Rodríguez v. Honduras*, “Judgment”, 29 July 1988, Series C No. 4, paras. 156, 175 and 187.

<sup>104</sup> REDACTED.

<sup>105</sup> REDACTED.

<sup>106</sup> REDACTED.

<sup>107</sup> REDACTED.

<sup>108</sup> REDACTED.

<sup>109</sup> REDACTED.

<sup>110</sup> REDACTED.

150. In the same report, it may be noted that individual victims reported events similar to those described in the statement by VPRS 3:

REDACTED.<sup>112</sup>

REDACTED.<sup>113</sup>

REDACTED.<sup>114</sup>

151. The crimes reported by VPRS 3, which seem to have been committed, are his abduction and enslavement. The Chamber notes that in his statement VPRS 3 provides a similar description of the relevant events referred to in the above-mentioned reports, that is to say: the locations (REDACTED), the date (REDACTED 2002, mentioned by a number of witnesses), the ethnic group targeted by the crimes (REDACTED), the fact that militia members were responsible for the attack and the type of acts perpetrated (abduction and enslavement).

152. On this point, the Chamber takes note of the argument of ad hoc Defence counsel to the effect that the allegations of “abduction and enslavement do not seem sufficiently sound”, in the light of the circumstances, to constitute crimes within the jurisdiction of the Court, thereby justifying an application for participation.<sup>115</sup> The Chamber considers that this argument is inadmissible in the present case in the light of the contextual evidence that it found in the official United Nations reports. The Chamber therefore considers that, subject to re-examination of the matter under rule 91 (1) of the Rules and taking into account available information, there are grounds to believe that the crimes reported in the statement by VPRS 3 fall within the jurisdiction of the Court pursuant to articles 6 to 8 of the Statute, in particular articles 7 (1) (c), 8 (2) (c) (i) and/or 8 (2) (c) (ii).

153. The Chamber is furthermore satisfied that there are grounds to believe that VPRS 3 suffered harm as a result of the commission of the said crimes.

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<sup>111</sup> REDACTED.

<sup>112</sup> REDACTED.

<sup>113</sup> REDACTED.

<sup>114</sup> REDACTED.

<sup>115</sup> “Response by ad hoc defence counsel to the applications for participation by victims in the proceedings registered under Nos. 01/04-01/d.p.; 01/04-02/d.p.; 01/04-03/d.p.; 01/04-04/d.p.; 01/04-05-d.p.; 01/04-06-d.p.”, 11 August 2005, No. ICC-01/04-81-Conf, para. 39.

## 5. VPRS 4

### (a) Statement

154. VPRS 4 is a man of Congolese nationality, REDACTED.

155. The events reported by VPRS 4 took place REDACTED.

156. VPRS 4 adds that REDACTED.

157. According to VPRS 4, REDACTED.

### (b) Findings of the Chamber

158. Ad hoc Defence counsel made no specific comment on the statement by VPRS 4.

159. As VPRS 4 is a natural person, the Chamber refers to the three other previously established criteria for determining his status as a victim within the meaning of rule 85 of the Rules.

160. With regard to the harm suffered, VPRS 4 considers that he suffered very grievous harm due to the loss of his wife, REDACTED. Moreover, the crime was committed REDACTED. Furthermore, VPRS 4 lost his home, which was completely destroyed, so that only the plot of land is left. His entire property was looted. VPRS 4 also claims that REDACTED caused him emotional suffering.

161. In assessing the harm suffered, the Chamber takes note of the 1985 Declaration and the 2005 Principles recognising “emotional suffering” and “economic loss” as forms of harm.<sup>116</sup> Furthermore, the Chamber again refers to the judgments of the Inter-American Court and the European Court that it cited when assessing the harm suffered by VPRS 1, which hold that emotional suffering and economic loss constitute harm.<sup>117</sup>

162. The Chamber therefore considers that there are grounds to believe that VPRS 4 suffered harm that may be characterised at this stage as emotional suffering and physical suffering related to the loss of his wife. The Chamber also considers that VPRS 4 suffered

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<sup>116</sup> See assessment of harm suffered by VPRS 1, paras. 115-116.

<sup>117</sup> Ibid.

harm that may be characterised as economic loss as a result of the looting of his property and the destruction of his house.

163. With regard to the question of whether or not a crime within the jurisdiction of the Court was committed, the statement of VPRS 4 mentions the commission REDACTED of, *inter alia*, a murder, systematic looting and the destruction of property. These acts of violence and destruction were allegedly perpetrated REDACTED.

164. In his REDACTED report REDACTED:

REDACTED.<sup>118</sup>

165. REDACTED later REDACTED:<sup>119</sup>

REDACTED.<sup>120</sup>

REDACTED.<sup>121</sup>

REDACTED.<sup>122</sup>

166. The crimes reported by VPRS 4, which seem to have been committed, are, in particular, the murder of his wife, the looting of his property and the destruction of his home. The Chamber notes that in his statement VPRS 4 provides a similar description of the relevant events referred to in the above-mentioned reports, that is to say: the place (REDACTED), the date (REDACTED 2003), the fact that REDACTED targeted by the crimes, the fact that militias were responsible for the attack, and the type of acts perpetrated (murder and systematic looting). The Chamber therefore considers that, subject to re-examination of the matter under rule 91 (1) of the Rules and taking into account available information, there are grounds to believe that the crimes reported in the statement by VPRS 4 fall within the jurisdiction of the Court pursuant to articles 6 to 8 of the Statute, in particular articles 7 (1) (a), 8 (2) (c) (i) and/or 8 (2) (e) (i).

167. Furthermore, the Chamber is satisfied that there are grounds to believe that VPRS 4 suffered harm as a result of the commission of these crimes.

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<sup>118</sup> Ibid., para. 16.

<sup>119</sup> REDACTED.

<sup>120</sup> REDACTED.

<sup>121</sup> REDACTED.

<sup>122</sup> REDACTED.

## 6. VPRS 5

### (a) Statement

168. VPRS 5 is a man of Congolese nationality, REDACTED.

169. The events described REDACTED.

### (b) Findings of the Chamber

170. As VPRS 5 is a natural person, the Chamber refers to the three other previously established criteria for determining his status as a victim within the meaning of rule 85 of the Rules.

171. With regard to the harm suffered, VPRS 5 states that he was tortured and considers that his detention was unlawful. He also states that he has frequently fallen ill since his detention and that he has lost his house and a substantial amount of looted property.

172. In assessing the harm suffered, the Chamber takes note of the 1985 Declaration and the 2005 Principles recognising “emotional suffering”, “physical suffering” and “economic loss” as forms of harm.<sup>123</sup> Furthermore, the Chamber again refers to the judgments of the Inter-American Court and the European Court that it cited when assessing the harm suffered by VPRS 1 and VPRS 3, which hold that emotional suffering, physical suffering and economic loss constitute harm.<sup>124</sup> Moreover, in its judgment in the *Selmouni v. France* case of 29 July 1999,<sup>125</sup> the European Court held that torture was an assault on a person’s physical and moral integrity and hence constituted harm.

173. The Chamber therefore considers that there are grounds to believe that VPRS 5 suffered harm that may be characterised at this stage as emotional and physical suffering related to his detention and the torture he suffered. The Chamber also considers that VPRS 5 suffered harm that may be characterised as economic loss as a result of the looting of his property and the destruction of his house.

<sup>123</sup> See the assessment of harm suffered by VPRS 3, paras. 145-146.

<sup>124</sup> See the assessment of harm suffered by VPRS 1, paras. 115-116.

<sup>125</sup> European Court of Human Rights, *Selmouni v. France*, “Judgment”, 28 July 1999, Application no. 25803/94, para. 123.

174. With regard to the question of whether or not a crime within the jurisdiction of the Court was committed, the statement by VPRS 5 mentions the commission REDACTED of, *inter alia*, acts of torture, unlawful detention, looting and destruction of property. VPRS 5 claims that these acts of violence and destruction were perpetrated REDACTED. The Chamber refers to the United Nations reports REDACTED,<sup>126</sup> which describe REDACTED. Furthermore, the Chamber takes note of the conclusions of the REDACTED report REDACTED,<sup>127</sup> according to which:

REDACTED.<sup>128</sup>

175. The crimes reported by VPRS 5, which seem to have been committed, are, in particular, torture, unlawful detention, the looting of his property and the destruction of his home. The Chamber notes that in his statement VPRS 5 provides a similar description of the relevant events referred to in the above-mentioned reports, that is to say: the place (REDACTED), the date (REDACTED 2003), the fact that REDACTED was targeted by the crimes, the fact that militia members were responsible for the attack and the type of acts perpetrated (killings, inhuman treatment and systematic looting). The Chamber considers that, subject to re-examination of the matter under rule 91 (1) of the Rules and taking into account available information, there are grounds to believe that the crimes reported in the statement by VPRS 5 fall within the jurisdiction of the Court pursuant to articles 6 to 8 of the Statute, in particular articles 7 (1) (e), 7 (1) (f) and/or 7 (1) (k), 8 (2) (c) (i) and/or 8 (2) (c) (ii), and/or 8 (2) (e) (i) and/or 8 (2) (e) (v).

176. Furthermore, the Chamber is satisfied that there are grounds to believe that VPRS 5 suffered harm as a result of the commission of these crimes.

## 7. VPRS 6

### (a) Statement

177. VPRS 6 is a woman of Congolese nationality REDACTED.

178. The reported events REDACTED.

179. VPRS 6 states that REDACTED.

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<sup>126</sup> REDACTED.

<sup>127</sup> REDACTED.

<sup>128</sup> REDACTED.

### (b) Findings of the Chamber

180. As VPRS 6 is a natural person, the Chamber refers to the three other previously established criteria for determining her status as a victim within the meaning of rule 85 of the Rules.

181. With regard to the harm suffered, VPRS 6 claims to have lost her husband, who was brutally tortured and killed in her presence. These images remain engraved in her memory. She adds that REDACTED looted all her property and destroyed her house. Since the events, she has been looking after her family on her own.

182. In assessing the harm suffered, the Chamber takes note of the 1985 Declaration and the 2005 Principles recognising “emotional suffering” and “economic loss” as forms of harm.<sup>129</sup> Furthermore, the Chamber again refers to the judgments of the Inter-American Court and the European Court that it cited when assessing the harm suffered by VPRS 1, which hold that emotional suffering and economic loss constitute harm.<sup>130</sup>

183. The Chamber therefore considers that there are grounds to believe that VPRS 6 suffered harm that may be characterised at this stage as emotional suffering related to the loss of her husband. The Chamber also considers that VPRS 6 suffered harm that may be characterised as economic loss as a result of the looting of her property and the destruction of her house.

184. With regard to the question of whether or not a crime within the jurisdiction of the Court was committed, the statement by VPRS 6 mentions the commission REDACTED of REDACTED acts of torture, murder, looting and the destruction of property. According to VPRS 6, these acts of violence and destruction were perpetrated by REDACTED. The Chamber has already referred, in connection with to VPRS 1 and VPRS 3, to the conclusions of the REDACTED report REDACTED,<sup>131</sup> with regard to REDACTED.<sup>132</sup> The Chamber also takes note of the following witness’s account contained in the report REDACTED:

REDACTED.<sup>133</sup>

<sup>129</sup> See the assessment of harm suffered by VPRS 1, paras. 115-116.

<sup>130</sup> Ibid.

<sup>131</sup> REDACTED.

<sup>132</sup> See the Chamber’s findings in respect of its assessment of the statement by VPRS 1, paras. 119-120, and VPRS 3, paras. 148-150, and REDACTED.

<sup>133</sup> REDACTED.



185. The crimes reported by VPRS 6, which seem to have been committed, are torture, murder, the looting of her property and the destruction of her home. The Chamber notes that in her statement VPRS 6 provides a similar description of the relevant events referred to in the above-mentioned reports, that is to say: the place (REDACTED), the date (REDACTED), the ethnic group targeted by the crimes (REDACTED), the fact that militiamen were responsible for the attack and the type of acts perpetrated (torture, mutilation, murder and looting). The Chamber considers that, subject to re-examination of the matter under rule 91 (1) of the Rules and taking into account available information, there are grounds to believe that the crimes reported in the statement by VPRS 6 fall within the jurisdiction of the Court pursuant to articles 6 to 8 of the Statute, in particular articles 7 (1) (a) and/or 7 (1) (f), 8 (2) (c) (i) and/or 8 (2) (c) (ii) and/or 8 (2) (e) (i) and/or 8 (2) (e) (v).

186. Furthermore, the Chamber is satisfied that there are grounds to believe that VPRS 6 suffered harm as a result of the commission of these crimes.

**FOR THESE REASONS,**

**DECIDES** that article 68 (3) of the Statute is applicable to the stage of investigation of the situation;

**ACCORDS** the status of victim to VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6, allowing them to participate in the proceedings at the stage of investigation of the situation in the DRC;

**REJECTS** the Prosecutor's arguments to the effect that there are, strictly speaking, no proceedings within the meaning of article 68 (3) of the Statute during the investigation stage, that the participation of the victims at the investigation stage is inappropriate, and that the applicants failed to show that their personal interests were affected at the investigation stage;

**REJECTS** ad hoc Defence counsel's arguments as set out in his response to the applications for participation of the victims in the proceedings;

**DECIDES** that the said victims, in exercising their procedural rights pursuant to article 68 (3) of the Statute, may, before the Pre-Trial Chamber and in connection with the current investigation:

- (a) Present their views and concerns;
- (b) File documents;
- (c) Request the Pre-Trial Chamber to order specific measures;

**ORDERS** the Registrar to notify the legal representative of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6 of the present decision;

**DECIDES** that, for the time being, VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6 or their representative shall not be given access to any non-public document contained in the record of the situation in the RDC;

**ORDERS** the Registrar to notify the legal representative of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6, in accordance with paragraphs 73 to 76 inclusive of the present decision.

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

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**Judge Claude Jorda**  
**Presiding Judge**

*[Electronic signature]*

*[Electronic signature]*

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**Judge Akua Kuenyehia**

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**Judge Silvia Steiner**

*[Electronic signature]*

*[Electronic signature]*

Done on Tuesday, 17 January 2006

At The Hague, the Netherlands