



Original: English

No. ICC-01/04
Date: 29 September 2026

PRE-TRIAL CHAMBER I

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

SITUATION IN
THE DEMOCRATIC REPUBLIC OF THE CONGO

Public Decision in relation to the ‘Prosecution’s provision of information on the Situation in the DRC’
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Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

☒ The Office of the Prosecutor

☐ Counsel for the Defence

☐ Legal Representatives of the Victims

☐ Legal Representatives of the Applicants

☐ Unrepresented Victims

☐ Unrepresented Applicants
(Participation/Reparation)

☐ The Office of Public Counsel for Victims

☐ The Office of Public Counsel for the
Defence

☐ States' Representatives

☐ Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and Reparations

☐ Other

Section

PRE-TRIAL CHAMBER I (the ‘Chamber’) of the International Criminal Court (the ‘Court’) issues this Decision in relation to the ‘Prosecution’s provision of information on the Situation in the DRC’.¹

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 17 June 2004, the Prosecution notified the Presidency that on 3 March 2004 it had received a referral from the Government of the Democratic Republic of the Congo (the ‘DRC’) pursuant to article 14 of the Rome Statute (the ‘Statute’) concerning alleged crimes under the jurisdiction of the Court ‘committed within the territory of the DRC since 1 July 2002’ (the ‘First Referral’).²
2. On 5 July 2004, following the Prosecution’s announcement of its determination under article 53 of the Statute to initiate an investigation, the Presidency assigned the Situation in the Democratic Republic of Congo to the Chamber (the ‘Situation in DRC’).³
3. On 5 June 2023, the Prosecution notified the Presidency that on 23 May 2023 it had received a second referral from the Government of the DRC concerning ‘alleged crimes within the jurisdiction of the Court committed in North Kivu, DRC, from 1 January 2022 to date’ (the ‘Second Referral’).⁴
4. On 15 June 2023, the Presidency assigned the Situation in the Democratic Republic of the Congo II to the Chamber (the ‘Situation in DRC II’).⁵
5. On 14 October 2024, the Prosecution informed the Chamber that, following a preliminary investigation into the events described in the Second Referral, it had concluded that ‘any alleged Rome Statute crimes committed in North Kivu since 1 January 2022 would fall within the parameters of, and are in any event sufficiently linked to, the [First Referral]’. As a result, the Prosecution considered that there was no ‘further requirement to “initiate an investigation” within the meaning of article 53(1) [of the Statute]’ and announced that it would investigate

¹ 27 July 2026, ICC-01/04-778-Conf-Exp (public redacted version filed on 28 July 2026, [ICC-01/04-778-Red](#)) (the ‘Submissions’).

² See Presidency, Decision assigning the Situation in the Democratic Republic of the Congo to Pre-Trial Chamber I, [ICC-01/04-1](#) (the ‘Decision Assigning DRC Situation’), p. 4.

³ [Decision Assigning DRC Situation](#).

⁴ [Annex 1](#) to Decision Assigning DRC Situation, ICC-01/23-1-AnxI.

⁵ [Decision assigning the Situation in the Democratic Republic of the Congo II to Pre-Trial Chamber I](#), ICC-01/23-1, with public annex I and confidential, *ex parte*, annex II.

the events described in the Second Referral within the scope of the existing Situation in DRC (the 'Notification').⁶

6. On 10 July 2026, the Chamber instructed the Prosecution to provide further clarification on the scope and progress of the investigation (the 'Order').⁷

7. On 27 July 2026, the Prosecution filed the 'Prosecution's provision of information on the Situation in the DRC' (the 'Submissions'),⁸ *inter alia*, 'provid[ing] the required notification to the Chamber for the purpose of regulation 66ter(2)(a) of the Regulations, and invit[ing] the Chamber to close the record of the Situation in the Democratic Republic of the Congo II (ICC-01/23)'.

II. DETERMINATION

8. The Chamber recalls that it instructed the Prosecution to provide information on (i) the Prosecution's understanding of the temporal scope of the First Referral; (ii) the legal and factual criteria on which it concluded that the alleged criminality described in the Second Referral is 'similar in scale, nature, manner of commission and impact' to that in the First Referral and targeted 'similar groups of victims' and 'for similar apparent motivations'; and, (iii) whether, and if so how, the events in the Second Referral are being incorporated within the existing investigation in the Situation in the DRC.⁹

9. In the Submissions, the Prosecution refers to the 'distinct statutory competences of the Prosecution and the Pre-Trial Chamber in the conduct of investigation', and 'the Prosecutor's discretion to complete or close investigations'.¹⁰ In particular, it submits that 'it is solely a matter for the Prosecutor to determine—on the basis of the investigation—whether and how many prosecutions should be initiated with respect to a given situation'.¹¹ The Chamber observes that, in light of its understanding of its prerogatives, the Prosecution provides only very limited and unspecific information on the investigative steps taken during the preliminary examination in the Situation in DRC II. The Chamber also notes the Prosecution's submissions

⁶ Notification concerning the Prosecution's determination with respect to the referral of the Democratic Republic of the Congo dated 23 May 2023, ICC-01/23-4-Conf (public redacted version filed on the same day, [ICC-01/23-4-Red](#)), with confidential annexes A and B.

⁷ [Order to the Prosecution to provide information](#), ICC-01/04-777 (the 'Order').

⁸ Prosecution's provision of information on the Situation in the DRC, ICC-01/04-778-Conf-Exp (public redacted version filed on 28 July 2026, [ICC-01/04-778-Red](#)).

⁹ [Order](#), para. 5.

¹⁰ [Submissions](#), paras 17, 23.

¹¹ [Submissions](#), para. 21.

on the link between the Situation in DRC and the Situation in DRCII in relation to which the Chamber has reservations.

10. The Chamber notes the Prosecution's notification for the purpose of regulation 66*ter*(2)(a) of the Regulations of the Court (the 'Regulations'). In this regard, it recalls that regulation 66*ter*(2) of the Regulations reads as follows:

(a) When the Prosecutor, having provided information in accordance with regulation 45, sub-regulation 1, decides not to initiate an investigation, or determines that he or she does not anticipate any further investigatory or prosecutorial activities in a situation in relation to which an investigation has been initiated, he or she shall inform in writing the Pre-Trial Chamber to which the situation has been assigned.

(b) Having been so informed, the Pre-Trial Chamber may, upon application or *proprio motu*, order the Registrar, when appropriate, to close the record of the situation. The Pre-Trial Chamber shall be responsible for judicial matters of a residual nature in this situation, unless otherwise provided in the Statute, the Rules or these Regulations or such matters are assigned to another Chamber by the Presidency.

11. The Chamber considers that the use of the word 'may' in subparagraph (b) vests the Chamber with discretion to close the record of a situation 'when appropriate'. Despite the information contained in the Notification and in the Prosecution's Submissions, the Chamber finds that it is not appropriate, at this juncture, to close the situation record 01/23. Accordingly, the Chamber decides that the situation record 01/23 shall remain open.

12. Noting that the Submissions inviting the Chamber to close the situation record 01/23 were filed in the situation record 01/04, as well as the fact that the Order relates to both situation records, the Chamber considers it necessary to transfer filings ICC-01/04-777, ICC-01/04-778-Conf-Exp and ICC-01/04-778-Red, as well as the present decision to the situation record 01/23. Henceforth, the Prosecution and other relevant stakeholders are instructed to file any court record relevant to the Situation in DRCII in the situation record 01/23.

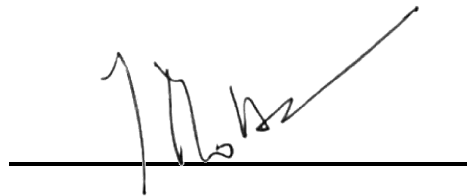
FOR THESE REASONS, THE CHAMBER HEREBY

DECIDES that the situation record 01/23 shall remain open;

INSTRUCTS the Registry to transfer the filings indicated in paragraph 12 from the situation record 01/04 to the situation record 01/23; and

INSTRUCTS the Prosecution and other relevant stakeholders to file any document relevant to the Situation in DRCII in the situation record 01/23.

Done in English. A French translation will follow. The English version remains authoritative.



Judge Iulia Antoanella Motoc, Presiding



**Judge Reine Adélaïde Sophie Alapini-
Gansou**



Judge María del Socorro Flores Liera

Dated this Tuesday, 29 September 2026

At The Hague, The Netherlands