

Case No: ICC-01/15

**REPRESENTATIONS SUBMITTED ON BEHALF OF VICTIMS OF
INTERNATIONAL CRIMES IN THE SITUATION IN GEORGIA
PERSUANT TO ARTICLE 15(3) OF THE ROME STATUTE TO THE
INTERNATIONAL CRIMINAL COURT**

- 12 November 2015 -

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I. INTRODUCTION

A. Executive summary

1. Pursuant to Article 15(3) of the Rome Statute to the International Criminal Court ('ICC Statute'), the International Partnership for Human Rights ('IPHR'), Norwegian Helsinki Committee ('NHC'), Russian Justice Initiative ('RJI'), and Global Diligence LLP (hereinafter 'the Filing Parties') submit the following Representations to Pre-Trial Chamber I ('PTC I') of the ICC through the ICC Victim Participation and Representation Section ('VPRS') on behalf of 87 victims of international crimes allegedly committed on the territory of Georgia between 1 July and 16 October 2008.
2. On the basis of information obtained through consultations with victims, the Filing Parties respectfully submit that victims represented in this submission support the opening of a full investigation as requested by the ICC Prosecutor, and that there appear to be no substantial reasons to believe that it is not in the interests of justice to conduct an investigation at this time.
3. The Filing Parties respectfully request PTC I to amend the temporal scope of the proposed investigation to cover events alleged to have taken place on the 13 and 16 October 2015, from which at least four victims in this group have suffered harm. The Filing Parties also respectfully request PTC I and the ICC Prosecutor to monitor events on the *de facto* border between Georgia and South Ossetia closely, to ensure that the conduct of the proposed investigation does not exacerbate the situation of those living in that area.
4. The methodology used by the Filing Parties to collect victim's views is set out in Section I. Section II presents an overview of victims' demographics and harm resulting from ICC Statute crimes. Section III presents a synthesis of victims' observations on the proposed investigation.
5. The Filing Parties will endeavour to assist PTC I, VPRS and the victims represented herein throughout these proceedings.

B. Filing Parties

6. The Filing Parties jointly submit these Representations to PTC I through the VRPS on behalf of 87 individual victims of international crimes alleged to have been perpetrated on the territory of Georgia between 1 July and 16 October 2010.

i. INTERNATIONAL PARTNERSHIP FOR HUMAN RIGHTS

7. IPHR is a non-profit organisation with its seat in Brussels. It was founded in 2008 with a mandate to empower local civil society groups and assist them in making their concerns heard at the international level. IPHR works together with human rights groups from different countries on project development and implementation, research, documentation and advocacy. Its team members have substantial experience in the field of international human rights and cooperate with human rights groups from across Europe, Central Asia and North America, helping to prepare publications and conduct advocacy activities. Since its establishment, IPHR has carried out a series of activities aimed at assisting and empowering local human rights groups from the Russian Federation, Central Asia and South Caucasus to engage effectively with the international community.
8. IPHR staff member Simon Papuashvili is a Georgian lawyer who has worked closely with victims of 2008 conflict while documenting crimes in the months following the cease fire. Mr Papuashvili currently represents several dozens of ethnic Georgian victims before the European Court of Human Rights (ECtHR).

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ii. GLOBAL DILIGENCE LLP

9. Global Diligence LLP is a private law firm based in the United Kingdom, specialising in complex legal issues in unstable and conflict-affected regions. Its main practice areas are international criminal law, human rights and justice-sector capacity building. Global Diligence LLP partners, of counsel and network of experts have substantial experience in international courts and tribunals as representatives of victims, defendants and members of the prosecution. Global Diligence LLP has submitted representations to the ICC on behalf of individual victims and groups from Ukraine, Cambodia and Mali.
10. The lead partner on this project, Alexandre Prezanti, advises individuals, organisations and public authorities on international legal issues, and specialises in evidential analysis, case

strategy and legal drafting in large complex human rights and international criminal law cases. Alexandre speaks fluent Russian and has substantial professional experience in Georgia and other post-Soviet states.

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iii. NORWEGIAN HELSINKI COMMITTEE

11. NHC was established in 1977 and works to promote respect for human rights in Europe, Central Asia and North America, with a focus on states in the former Soviet Union and the West Balkans, as well as Norway. NHC bases its work on international human rights instruments adopted by the United Nations, the Council of Europe, the Organization of Security and Cooperation in Europe ('OSCE'), including the 1975 Helsinki Final Act. NHC monitors the human rights situation in individual countries, including in conflict zones, and reports violations to relevant national authorities, international organizations and other stakeholders. In addition to documentation and advocacy, NHC works with human rights education and supporting civil society and independent media. NHC is a member of the Civic Solidarity Platform (CSP) and International Federation for Human Rights ('FIDH') and has a large international network.
12. NHC has been working in Georgia for 20 years, at first with elections, later with supporting civil society and human rights education. Following the 2008 armed conflict, NHC worked with local and international partners to document war crimes and crimes against humanity. The unedited material was sent to the ICC, while part of the material was presented in 2010 in a report entitled 'August Ruins.' In four separate reports from 2010 to 2014, NHC documented the ineffectiveness of domestic investigations in both Georgia and Russia, presenting its findings to Georgia and the ICC. The NHC has a representative on the international advisory board of the office of the Public Defender (Ombudsman) of the Parliament of Georgia, Mr Ucha Nanuashvili.

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iv. RUSSIAN JUSTICE INITIATIVE

13. RJI is a Russia-based legal aid organization that utilises domestic and international legal mechanisms to seek justice for grave human rights violations in the North and South Caucasus, and has represented over 2000 clients in over 300 cases lodged at the European Court of Human Rights ('ECtHR'). In the framework of a joint litigation project with a Georgia-based NGO from 2008-2012, RJI submitted over 25 applications to the ECtHR from Georgia and South Ossetia concerning grave violations of the European Convention during the 2008 Russia-Georgia conflict and its aftermath.

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C. Legal Basis and Standing

14. These Representations are submitted pursuant to Article 15(3) of the ICC Statute and Rule 50(3) of the ICC Rules of Procedure and Evidence. Regulation 50(1) of the ICC Regulations of the Court sets the time limit for this submission at 30 days from the date of the ICC Prosecutor's Public Notice of a request for authorisation of an investigation under Article 15(3) of the ICC Statute.
15. On 13 October 2015, the ICC Prosecutor made a *Request for authorisation of an investigation pursuant to Article 15* into alleged war crimes and crimes against humanity in relation to the 2008 armed conflict in Georgia during the period from 1 July to 10 October 2008 ('*Request for Authorisation*').¹ On the same day, the ICC Prosecutor issued a Public Notice informing victims and the general public of her *Request for Authorisation*.² Pursuant to Regulation 50(1) of the ICC Regulations of the Court, the deadline for submitting the Representations is 12 November 2015.
16. On 16 October 2015, a representative of VPRS contacted IPHR with an appeal for information in relation to Georgian victims and informing IPHR of victims' rights to submit representations triggered by the *Request for Authorisation*. In the exchange that followed, IPHR informed VPRS

¹ ICC-01/05, *Situation in Georgia*, "Request for authorisation of an investigation pursuant to Article 15", 13 October 2015.

² ICC Office of the Prosecutor, "The Prosecutor of the International Criminal Court, Fatou Bensouda, requests judges for authorisation to open an investigation into the Situation in Georgia", available at: http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/pr1159.aspx (last accessed 31 October 2015).

of the Filing Parties' intention to submit these Representations on behalf of the victims. The final format and content of these Representations was selected on the basis of this exchange.

17. In their capacity as representatives of the victims whose information is submitted herewith, the Filing Parties have standing to submit these Representations pursuant to Article 15(3) of the ICC Statute.

D. Methodology

18. These Representations combine the results of victim consultations conducted by IPHR, NHC and SRJI. Global Diligence LLP provided guidance to interviewers conducting the consultations and developed the Additional Questionnaire to assist interviewers with the structure and content of interviews.³ The Additional Questionnaire is complementary to questions 9 and 10 of the Victims Representation Form provided by VPRS, designed to gather further detail on victims' views on the desirability and scope of the requested investigation. Each organisation interviewed a different group of victims and employed its own methodology for the purpose of this consultation process. As a result, the methodologies used by each group are outlined separately in this section:

i. IPHR GROUP

19. Given the short time frame for submitting these Representations, the wide geographical dispersal of victims, their remote location and limited access to information technology, IPHR was able to collect detailed observations from only a relatively small number of victims.⁴ In total, 27 victims were interviewed by IPHR in four IDP settlements⁵ and 17 'conflict zone' villages⁶ over a period of one week in October 2015. Care was taken to interview only those individuals on whose behalf no other organisation was planning to submit representations to the ICC. For the purposes of these Representations, this group of victims will be referred to hereinafter as the '*IPHR group*'.
20. Each interviewee was assisted in filling out the Victims Representation Form, followed by a semi-structured interview conducted in Georgian and based on the Additional Questionnaire.

³ See Annex A – Additional Questionnaire

⁴ Victims whose views are represented in this submission are located in various Internally Displaced Persons camps, villages and towns across Georgia. Although Georgia is a relatively small country, its mountainous terrain and lack of infrastructure in the provinces limit accessibility and communication with a large group of dispersed victims.

⁵ Tserovani, Shavshvebi, Khurvaleti, Karaleti.

⁶ Brotsleti, Ergneti, Tkviavi, Koshka, Shindisi, Zemo Khviti, Kvemo Khviti, Brotsleti, Megvrekisi, Ergneti, Pkvenisi, Kvemo Nikozi, Zemo Nikozi, Tirdznisi, Koshka, Mereti, Karbi.

21. A major challenge encountered during this consultation process was a lack of awareness and understanding of the ICC and international criminal law on the part of the interviewees. In order to ensure that the consultations remained meaningful, interviewees received a brief introduction to the ICC as well as an explanation of the object and purpose of the *Request for Authorisation* and the possible next steps.⁷ Certain legal terms used in the *Request for Authorisation*, such as “indiscriminate or disproportionate attacks”, were also explained in ‘layman’s terms’. Special care was taken to manage expectations by explaining the purpose of the consultation process and the fact that this process did not amount to victim participation or victim reparation claims before the ICC. Measures were also taken to avoid victim re-traumatisation as a result of the consultation process.
22. The completed Victims Representation Forms and Additional Questionnaires for this group are submitted with these Representations in a confidential annex.⁸

ii. NHC GROUP

23. A further group of 40 individuals were interviewed by NHC and associated organisations between August and October 2008, and are currently European Court of Human Rights (‘ECtHR’) applicants as victims of human rights violations related to the 2008 armed conflict. During the interviews conducted in 2008, demographic information and statements about harm suffered by the victims were collected by the interviewers. The resulting statements were transmitted by NHC to the ICC Prosecutor in 2008.⁹ For the purposes of these Representations, this group of victims will be referred to hereinafter as the ‘*NHC group*’.
24. At the time of the initial interviews, all victims confirmed their support for an ICC investigation into events associated with harm suffered by them during the 2008 armed conflict. Due to the limited time frame for submitting these Representations, the Filing Parties were unable to collect detailed observations from this group using the Victims Representation Form and Additional Questionnaire. In October 2015, the Filing Parties made several attempts to contact all victims to confirm their continuing support for the requested investigation. Unfortunately, for many of the victims, contact numbers provided in October 2008 are no longer working, and given the limited time period for preparing these Representations, the Filing Parties were unable to conduct a thorough inquiry into the whereabouts of victims who were not reached by phone. In total, the Filing Parties were able to reach six individual victims,¹⁰ all of whom confirmed their

⁷ 50 copies of the *Q&A: Georgia and the International Criminal Court in Georgian* prepared by Human Rights Watch were disseminated: Human Rights Watch, *Q & A: Georgia and the International Criminal Court*, October 14, 2015, available at

https://www.hrw.org/sites/default/files/supporting_resources/qa_georgia_and_the_international_criminal_court.pdf

⁸ Confidential Annex E – Victim Representation Forms and Additional Questionnaires: IPHR Group.

⁹ NHC, Interviews about war crimes and crimes against humanity in Western and Central Georgia during and after the armed conflict in August 2008, 2008; See also, Annex G – Interviews: HRC Group.

¹⁰ Annex C, Victims 11, 15, 31, 37 and 38.

continuing support for an ICC investigation. Moreover, the Filing Parties have learned that three members of this group are now deceased.¹¹

iii. RJI GROUP

25. Due to the narrow time-frame for these consultations, the relative difficulty in accessing South Ossetia, and the refusal of local authorities to assist with locating victims (the Prosecutor's office was willing to assist but not the Ministry of Foreign Affairs, whose permission was needed in order for the Prosecutor's office to proceed), RJI was able to collect detailed observations from a total of 20 victims. All victims were interviewed by RJI in Tskhinvali and nine surrounding villages, as well as in Vladikavkaz, between 29 October and 2 November 2015. Interviews were conducted by a Russian national, who is an experienced human rights investigator. Care was taken to interview only those individuals on whose behalf no other organisation was planning to submit representations to the ICC, although several of the individuals interviewed have applications pending at the ECtHR, where they are represented by RJI.
26. Each interviewee was assisted in filling out the Victims Representation Form, followed by a semi-structured interview conducted in Russian and based on the Additional Questionnaire.
27. A major challenge encountered during this consultation process was a lack of awareness and understanding of the ICC and international criminal law on the part of the interviewees, although some interviewees were more familiar with the concept of international judicial bodies due to their previous cooperation with RJI in the framework of their applications to the ECtHR. In order to ensure that the consultations remained meaningful, interviewees received a brief introduction to the ICC, and where relevant, the differences between the ECtHR and the ICC were explained.

iv. METHODOLOGY OF ANALYSIS AND PRESENTATION

28. Victim Representations Forms, written records of interviews based on the Additional Questionnaire and victim statements were transmitted to Global Diligence LLP for analysis. An analytical table of victim information, including demographic information, information about harm suffered and associated ICC Statute crimes, was created for each of the three groups of victims. These tables, attached to these Representations in Annexes B, C and D, will allow PTC I to assess the admissibility of the interviewed victims' views. A digest of victim information is presented in Section II of these Representations. This digest will assist PTC I in its assessment of the representativeness of victims' views contained in this submission. A summary and analysis of victims' views in relation to the *Request for Authorisation* for each of the three groups is presented in Section III of these Representations.

¹¹ Annex C, Victims 24, 25 and 33.

II. VICTIM INFORMATION

A. Admissibility

29. For their observations to be considered by PTC I, individuals must satisfy (to a *prima facie* standard) the legal definition of victims set down by Rule 85 of the ICC Rules of Procedure and Evidence:¹²

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.

30. Using these criteria, the Filing Parties have analysed information provided by 87 individuals as part of the three consultations processes described in the preceding section. Three analytical tables, one for each group of victims, presents the victims’ demographic information, information about harm suffered and associated ICC Statute crimes. The tables are attached to this report in Annexes B, C and D. Based on this analysis, we respectfully submit that all victims whose views are put forward in these Representations meet the criteria for admissibility to a *prima facie* standard.

B. Overview of victim information

31. The Filing Parties respectfully submit that the 87 individuals who contributed their views to this submission embody a representative cross-section of the overall victims of international crimes related to the 2008 armed conflict in Georgia. The group consists of individuals from both major ethnic groups involved in this conflict: Georgians and South Ossetians. Victims recalled having suffered harm from a broad range of ICC crimes, in over 40 locations in South Ossetia and other parts of Georgia, at the hands of Georgian, Ossetian and Russian forces.

32. In this section, the Filing Parties present an overview of victim information resulting from each of the three consultations, to assist PTC I in assessing the representativeness of views put forward in this submission.

¹² ICC-02/11, *Situation in the Republic of Cote d’Ivoire*, Order to the Victims Participation and Reparations Section Concerning Victims’ Representations Pursuant to Article 15(3) of the Statute, 6 July 2011, para. 10: “Rule 85 of the Rules provides the definition of “victims” for the purposes of article 15(3) of the Statute and rule 50(3) of the Rules. The Chamber is therefore of the view that any individual representations, to the extent possible, are to include sufficient information about the identity of any individuals who make representations in this context; the harm they suffered; and the link with any crimes coming within the jurisdiction of the Court [...] the Chamber requests the VPRS to undertake an initial *prima facie* assessment to ensure that only those representations emanating from sources who are potentially victims within the meaning of rule 85 of the Rules are sent to the Chamber for consideration, within the context of the prosecution’s present application.”

i. IPHR GROUP

33. All 27 victims in the IPHR Group are ethnic Georgians, Georgian nationals and Georgian native speakers. Fourteen of the interviewed victims are male and thirteen are female. The age of the interviewees ranges from 27 to 80, with 55% of the interviewees aged 60 or over. All victims were civilians throughout the period of armed conflict.

34. Victims in this group experienced harm in some of the worst affected areas during the August 2008 armed conflict (digit indicates number of victims from each geographic location):

- Eredvi (2)
- Akhagori (2)
- Ksuisi (1)
- Zemo Achabeti (2)
- Vanati (1)
- Tkviavi (2)
- Gugutiantkari (2)
- Shindisi (2)
- Zemo Khviti (2)
- Brotsleti (2)
- Ergneti (4)
- Pkhvenisi (3)
- Zemo Nikozi (2).

35. Members of this group experienced and suffered harm from the following ICC Statute crimes (digit indicates the number of victims for each crime):

- Murder/Wilful killing (1)
- Forcible deportation or transfer (10)
- Pillage (4)
- Destruction of property (21).

36. In addition, there is *prima facie* evidence that all of the interviewees in this group are victims of the crime against humanity of persecution on the ground of their Georgian ethnicity and/or nationality.

37. All of the alleged crimes took place between 7 and 20 August 2008.

ii. NHC GROUP

38. Of the 40 victims in the NHC Group, 25 are male and 15 are female. Their age ranges between 37 and 86, with 82% of interviewees being 50 years old or older.

39. Victims in this group experienced harm in 22 different locations across the conflict-affected territory, including (digit indicates number of victims from each geographic location):

- Sakiri (1)
- Tskhinvali (3)
- Variani (1)
- Nuli (1)
- Disevi (4)
- Shertuli (1)
- Dvani (3)
- Nikozi (1)
- Kurta (1)
- Tirdzn (1)
- Tkviavi (7)
- Ganmukhuri (2)
- Prizi (2)
- Achabeti (1)
- Pkhvinis (1)
- Ergneti (1)
- Beloti (2)
- Kitsnisi (1)
- Ditsi (1)
- Tirdznisi (1)
- Brotsleti (2)
- Sakasheti (1)

40. Members of this group experienced and suffered harm from the following ICC Statute crimes (digit indicates the number of victims for each crime):

- Indiscriminate attack on the civilian population (13)
- Hostage-taking (1)
- Inhuman treatment (1)
- Destruction of civilian property (18)
- Appropriation of civilian property/pillage (21)
- Forced displacement (7)
- Employing poison (1)
- Unlawful confinement (1)

- Forced labour (1)
- Intentional attack on civilians (9)
- Murder (3)

41. In the majority of cases, harm was suffered as a result of crimes committed in August and September 2015, starting from 7 August. Most crimes are reported to have taken place between 8 and 12 August 2015, with another group of crimes taking place in the first days of September 2015. One victim reports a crime on 16 October 2015,¹³ which is six days after the end of the time period identified for investigation by the ICC Prosecutor in the *Request for Authorisation*.

iii. RJI GROUP

42. All 20 victims in the RJI Group describe themselves as ethnic South Ossetians and nationals of South Ossetia. Twelve of the interviewed victims are female and eight are male. The age of the interviewees ranges from 23 to 75, with 65% of the interviewees in the 30 – 50 age category. Nineteen of the victims were civilians throughout the period of armed conflict. One of the victims was a *hors de combat* member of South Ossetian forces at the time of the alleged criminal act perpetrated against him.

43. All victims in this group (and deceased or disappeared family members represented by them) experienced harm on the territory of South Ossetia, while three victims were also detained and suffered inhuman treatment in other parts of Georgia. Settlements where harm was incurred include (digit indicates number of victims from each geographic location):

- Tskhinavali (7)
- Thet village (4)
- Tsnelis (1)
- Znaur district (1)
- Galuanta (1)
- Khetagurovo (4)
- Korkula (2)
- Various places of detention in Georgia – Gori, Khashuri, Borjomi, Akhaltsikhi, Avnevi, Vaznavi (3)

44. Members of this group experienced and suffered harm from the following ICC Statute crimes (digit indicates the number of victims for each crime):

- Indiscriminate attack on civilians and/or murder (5)
- Indiscriminate attack on civilians (5)

¹³ Annex C, Victim 30.

- Murder (4) including one attempted murder
- Enforced disappearance (5)
- Unlawful confinement (7)
- Inhuman treatment (5)
- Hostage-taking (1)

45. In the majority of cases, harm was suffered from crimes committed between 7 August and 11 August 2015. In two cases involving unlawful confinement, harm was suffered up to the 20 and 26 August 2015. Three cases of enforced disappearance took place on 13 October 2015,¹⁴ which is three days after the end of the time period identified for investigation by the ICC Prosecutor in the *Request for Authorisation*.

C. Conclusion

46. With the exception of Georgian and Russian peacekeepers, who are alleged to have been attacked in violation of international humanitarian law protecting peacekeepers,¹⁵ victims joining this submission are representative of the full spectrum of victims of crimes emanating from the 2008 armed conflict in Georgia. Both major ethnic groups are represented, with at least 20 individuals describing themselves as ethnic South Ossetians. The age of victims ranges between 23 and 86, with a majority of victims aged 50 or over. Victims' gender is also relatively balanced, with 47 male and 40 female victims.

47. Crimes against property appear to be the most prevalent amongst the group, with 39 victims alleging property destruction and 25 alleging unlawful appropriation or pillage of their civilian property. A large proportion of victims from both ethnic groups claim to have suffered from attacks on civilians (27 victims) and the crime of murder (13 victims). A large share of the ethnically Georgian population testifies to the crime of forcible transfer (17 victims). Unlawful confinement (8 victims), inhuman treatment (6 victims) and enforced disappearance (5 victims) are also notable crimes amongst this group of victims. Crimes are alleged to have taken place in over 40 locations across South Ossetia and other parts of Georgia. Victims name all three parties to the conflict, Georgian, South Ossetian and Russian forces, as being responsible for the alleged crimes. Although most harm was suffered in the first days of war in August 2015, victims in this group report crimes throughout the temporal jurisdiction proposed by the ICC Prosecutor in the *Request for Authorisation*,¹⁶ while four of the victims fall outside the proposed time-frame by 3 and 6 days.

¹⁴ Annex D, Victims 11, 19 and 20.

¹⁵ *Request for Authorisation*, para. 142.

¹⁶ *Request for Authorisation*, para. 1.

III. VICTIMS' VIEWS

48. In this section, the views expressed in each victim group are summarised and discussed. Broadly speaking, all 87 victims interviewed for the purpose of these Representations expressed their support for the ICC Prosecutor's *Request for Authorisation*. A minority of interviewees have expressed concern that the investigation may lead to further violence, whilst others have made comments on the scope of the investigation proposed by the ICC Prosecutor. A group of 31 victims who had expressed their support for an ICC investigation in 2008 could not be reached to confirm their position, while 3 other victims have since died.

A. IPHR Group

49. All 27 interviewees in this group voiced their support for the ICC Prosecutor's *Request for Authorisation*. They remain hopeful that the ICC will be able to deliver fair and impartial justice and prevent further violence. All interviewed victims agree with the time frame for the investigation identified in the *Request for Authorisation* (1 July and 10 October 2008), stating that it sufficiently covers all criminal acts related to the 2008 armed conflict from which they have suffered harm. They also unanimously agree with the crimes selected for further investigation by the ICC Prosecutor, namely: killing; forcible displacement and persecution of ethnic Georgian civilians and the destruction and pillage of their property; and intentional attacks against Georgian and Russian peacekeepers. Furthermore, all 27 victims stated that they would like the Prosecutor to investigate indiscriminate and disproportionate attacks committed against civilians and civilian objects, either because they believed that these crimes were committed in their respective villages or because they knew someone who suffered from these crimes.

50. Conversely, only five victims expressly agreed that the ICC Prosecutor should also investigate rape and other forms of sexual violence in order to establish truth in this respect. The majority of victims did not express an opinion on this matter, noting a lack of information on such crimes. One interviewee from the village of Tkviavi noted one case of rape in his village that was related to the armed conflict, stating:

Some of our male neighbours claim that they have heard how one of our female neighbours was raped during the August 2008 war. However, she denied the incident, so, perhaps this should be investigated to establish the truth and punish perpetrators.¹⁷

51. All 27 victims support an investigation into the responsibility of all parties to the conflict, including members of South Ossetian forces and irregular militias, as well as Georgian and Russian armed forces.

¹⁷ See Annex B, Victim 9.

52. The biggest concern for the vast majority of interviewed victims remains their displacement and economic insecurity emanating directly from the 2008 conflict. Most victims expressed their profound disappointment – many voicing their anger – with the lack of government assistance and redress. Most claim that they have not received full and effective reparation to address the harm that they have suffered. The majority of interviewees expressed that compensation schemes and other initiatives offered by the Government of Georgia have been insufficient to rebuild their homes and livelihoods. Moreover, victims of destruction and pillage of property in ‘conflict zone’ villages claim that they have received no or little assistance from the government. Thus, 16 of the 27 interviewees believe that the main benefit of an ICC investigation would be reparation to address the harm that they have suffered. The following quote is representative of the victims’ support for but also somewhat unrealistic expectations from an ICC investigation:

*The ICC should open the investigation. Otherwise, I’d rather be dead than continue to live in this situation of embarrassment and deep economic trouble.*¹⁸

53. Nevertheless, at least eight of the interviewed victims primarily hope to learn the truth about the events of August 2008. One victim expressed that having lost everything, the only thing that would still make a difference would be learning the truth. Only three of the interviewed victims deem that punishing those responsible for crimes would be the main benefit.

54. All 27 interviewees expressed a lack of confidence in the national justice system. They specifically noted Georgian authorities’ inability to investigate and prosecute crimes related to the 2008 armed conflict. For these reasons, most victims did not make any complaints to the police or prosecuting authorities. Only one of the 27 interviewed victims said that she attempted to report the crime of pillage to the police, but to no avail.¹⁹

55. Six interviewees expressed concerns that the investigation might trigger more violence from the side of Russian authorities. According to one of them:

*The de-facto border is so close to our village that if something happens we won’t even be able to flee. Opening the ICC investigation might hamper stability and trigger further violence.*²⁰

56. The other 21 interviewees saw no political, social, and economic or any other reasons why the ICC prosecutor should not proceed with the investigation.

57. Most of the interviewed victims expressed their willingness to engage with the ICC in the future. Nevertheless, three victims do not wish to be contacted in the future²¹ and many complained that they had given their stories to human rights organisations and journalists in the past, but were never subsequently informed of how their information was used.

¹⁸ See Annex B, Victim 12.

¹⁹ See Annex B, Victim 19.

²⁰ See Annex B, Victim 21.

²¹ Annex B, Victims 5, 7 and 10.

B. NHC Group

58. All 40 victims in this group were interviewed between August and October 2008. During these initial interviews, all 40 victims agreed to participate in any potential proceedings before the ICC and to support such ICC proceedings by providing evidence. The Filing Parties made several attempts to contact every individual in this group in October 2015. Unfortunately, for many of the victims, contact numbers provided in October 2008 are no longer working, and given the limited time period for preparing these Representations, the Filing Parties were unable to conduct a thorough inquiry into the whereabouts of the victims who were not reached by phone. Moreover, three of the victims have been confirmed deceased by their family members.²²
59. In total, the Filing Parties were able to reach six victims from the NHC Group.²³ All six victims confirmed that they support an ICC investigation as requested by the ICC Prosecutor.

C. RJI Group

60. All victims interviewed in this group agree that the investigation should be authorised. The primary reasons for their support for an ICC investigation are holding perpetrators to account for serious violations of their rights/rights of their family members and generally to establish responsibility for crimes committed in the context of the 2008 conflict, informing the international community about what happened in South Ossetia in 2008, and the hope that the ICC will conduct an impartial investigation into the events.
61. While most victims agreed with the timeframe proposed by the Prosecutor, relatives representing the interests of three victims of enforced disappearances allegedly perpetrated by Georgian servicemen on or around the 13 October 2008 request that the timeframe for the proposed investigation be extended to cover these crimes.²⁴
62. The victims agree on the type of crimes to be investigated. Victims of indiscriminate and/or deliberate attacks on civilian objects, or on civilians fleeing the conflict zone in August 2008, urge the Prosecutor to investigate the conduct of hostilities by Georgian forces in that respect. Even those victims who did not suffer directly from these attacks cited severe property damage as well as civilian deaths as a result of indiscriminate attacks. Victims did not specify any other crimes additional to the ones already included in the *Request for Authorisation*.

²² Annex C, Victims 24, 25 and 33.

²³ Annex C, Victims 11, 15, 31, 37 and 38.

²⁴ Annex D, Victims 11, 19 and 20.

63. Aside from a general support for investigating the three main parties to the conflict (Georgian, South Ossetian and Russian forces), some of the victims expressed the need to investigate mercenaries who fought on the Georgian side.

64. Victims referred to certain actions undertaken by the Russian, South Ossetian and Georgian investigative authorities, including the Russian Investigative Committee and the South Ossetia Prosecutor's Office, as well as the Georgian Prosecutor's Office. In all cases domestic remedies were ineffectual, even where violations were investigated by the Human Rights Commissioner for the Council of Europe with the cooperation of the Georgian investigative authorities. In other cases, victims did not attempt to seek justice at the national level, believing that it was futile.

IV. CONCLUSION

65. These Representations are submitted pursuant to Article 15(3) of the ICC Statute for the purpose of relaying the views of 87 individual victims on the ICC Prosecutor's *Request for Authorisation* of an investigation into international crimes allegedly committed on the territory of Georgia in 2008.
66. Victims' information and views have been collected by the Filing Parties in a series of consultations, conducted in 2008 and 2015. The information has been analysed using the ICC Statute, and the Filing Parties respectfully submit that all 87 individuals qualify as victims for the purpose of this submission.
67. An analysis of victims' demographic information and statements of harm and associated crimes reveals that this group of 87 victims is representative of the overall makeup of victims crimes connected to the 2008 armed conflict in Georgia, with the exception of crimes alleged to have been committed against peacekeepers.
68. There is broad support for an ICC investigation amongst the group. The main reasons for the victims' support include the hope for truth and accountability from an impartial justice process and reparations. Nevertheless, at least six ethnically Georgian victims living in close proximity to the *de facto* border between Georgia and South Ossetia have expressed concerns that the investigation might trigger more violence from the side of Russian authorities. No other victims noted any political, social, economic or any other reasons why the ICC Prosecutor should not be allowed to proceed with the investigation.
69. As to the scope of the investigation proposed in the *Request for Authorisation*, victims generally agree with the parameters set out by the ICC Prosecutor. Nevertheless, at least four victims allege to have suffered from crimes, which fall outside of the time frame proposed by the ICC Prosecutor by 3 and 6 days. Some victims have expressed the need to investigate mercenaries who fought on the Georgian side, while a number of the victims have stressed the importance of conducting an investigation into direct and indiscriminate attacks against civilians by all parties. Other crimes, revealed from information provided by victims which have not been mentioned in the *Request for Authorisation*, include unlawful confinement, hostage-taking, inhuman treatment, employing poison, forced labour and enforced disappearance.
70. All victims consulted in 2015 expressed their lack of confidence in the willingness and/or ability of the Georgian, South Ossetian and/or Russian domestic legal systems to achieve fair, impartial and effective justice in this situation.
71. On the basis of the foregoing, the Filing Parties respectfully submit that victims represented in this submission support the opening of a full investigation as requested by the ICC Prosecutor,

and that there appear to be no substantial reasons to believe that it is not in the interests of justice to conduct an investigation at this time.

72. However, the Filing Parties respectfully request PTC I to amend the temporal scope of the proposed investigation to cover events alleged to have taken place on the 13 and 16 October 2015, from which at least four victims in this group have suffered harm. The Filing Parties also respectfully request PTC I and the ICC Prosecutor to closely monitor events on the *de facto* border, to ensure that the conduct of the proposed investigation does not exacerbate the situation of those living in that area.

73. The Filing Parties are mindful of PTC I's discretion to request further information from victims under Rule 50(4) of the ICC Rules of Procedure and Evidence, and its duty under Rule 50(5) to give notice of its decision to all victims who have made representations. The Filing Parties will endeavour to assist the Chamber and VPRS in this regard.

V. ANNEXES

74. These Representations include six annexes. The Filing Parties respectfully request VPRS and PTC I to maintain confidentiality of information contained in Confidential Annexes B – G.

- ANNEX A – ADDITIONAL QUESTIONNAIRE
- CONFIDENTIAL ANNEX B – VICTIM INFORMATION: IPHR GROUP
- CONFIDENTIAL ANNEX C – VICTIM INFORMATION: NHC GROUP
- CONFIDENTIAL ANNEX D – VICTIM INFORMATION: RJI GROUP
- CONFIDENTIAL ANNEX E - VICTIM REPRESENTATION FORMS AND ADDITIONAL QUESTIONNAIRES: IPHR GROUP
- CONFIDENTIAL ANNEX F – VICTIM REPRESENTATION FORMS AND ADDITIONAL QUESTIONNAIRES: RJI GROUP
- CONFIDENTIAL ANNEX G – INTERVIEWS: NHC GROUP

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ANNEX A: ADDITIONAL QUESTIONNAIRE

ADDITIONAL QUESTIONNAIRE FOR VICTIMS AND VICTIM-REPRESENTING ORGANISATIONS

Introduction: The International Criminal Court ('ICC') Prosecutor has requested an authorisation from the judges of the ICC Pre-Trial Chamber ('PTC') to open a full investigation into international crimes that may have taken place in Georgia between 1 July 2008 and 10 October 2008. According to Article 15(3) of the Rome Statute to the ICC ('ICC Statute'), victims have the right to submit their observations to the PTC on whether the ICC Prosecutor should be allowed to proceed with an investigation. The purpose of this questionnaire is to collect victims' observations, in order to represent the victims' positions in a collective submission before the PTC.

Questions (to be answered in addition to those on the ICC form):

- (1) The ICC Prosecutor has requested to investigate events that occurred in Georgia between 1 July 2008 and 10 October 2008.
 - a. Do you agree with this time frame for the investigation?
 - b. Does it sufficiently cover all acts related to the conflict from which you have suffered harm?
 - c. If it does not – please suggest an alternative time frame and explain your position.
- (2) The ICC Prosecutor believes that the following crimes may have taken place: killings, forcible displacement and persecution of ethnic Georgian civilians and the destruction and pillaging of their property; intentional attacks against Georgian and Russian peacekeepers.
 - a. Should any or all of these crimes be investigated? Why?
 - b. Are there any other crimes that should be investigated? Why?
- (3) The ICC Prosecutor has received inconclusive information about indiscriminate and disproportionate attacks committed against civilian targets by Georgian and Russian armed forces. Should she investigate any or all of these crimes further? Why?
- (4) The ICC Prosecutor has received reports of sexual and gender-based violence including rape. Should she investigate such crimes further? Why?
- (5) The ICC Prosecutor is requesting to investigate the responsibility of members of South Ossetian forces and irregular militias (*Opolchentsy* or *Dajgupebebi*), as well as Georgian and Russian armed forces.
 - a. Do you agree that all of these groups should be investigated? Why?
 - b. Are there any other groups that should be investigated? Why?

- (6) Have you taken any steps to obtain justice for the harm that you have suffered? If you have – what was the outcome?
- (7) Do you believe that national authorities in Georgia and Russia are willing and/or able to investigate and prosecute crimes related to the conflict? Why?
- (8) What do you see as the main benefits of an investigation by the ICC Prosecutor?
- (9) Aside from the prospect of punishment of those responsible for crimes – are there any other benefits from an ICC investigation?
- (10) Are there any reasons – political, social, economic or other – why the ICC Prosecutor should not proceed with an investigation?
- (11) Do you have any other observations to convey to the ICC Judges who will decide whether or not to open an investigation?