

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-02/04-01/05

Date: 26 March 2007

PRE-TRIAL CHAMBER II

Before: Judge Mauro Politi, Single judge

Registrar: Mr Bruno Cathala

**SITUATION IN UGANDA
IN THE CASE OF
THE PROSECUTOR**

*v. Joseph KONY, Vincent OTTI, Okot ODHIAMBO, Raska LUKWIYA
and Dominic ONGWEN*

Public Document

**OPCV's Observations on the Victims' Applications a/0010/06, a/0064/06 to
a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06 to participate in the
Uganda situation and in the case *The Prosecutor v. Joseph Kony, Vincent Otti, Okot
Odhiambo, Raska Lukwiya and Dominic Ongwen***

The Office of the Prosecutor

Mr. Luis Moreno Ocampo, Prosecutor
Ms. Fatou Bensouda, Deputy Prosecutor
Ms. Christine Chung, Senior Trial Lawyer

***Ad hoc* Counsel for the Defence**

Ms. Michelyne C. St-Laurent

Office of Public Counsel for Victims

Mrs. Paolina Massidda

I. Introduction

1. The Office of Public Counsel for Victims (the “OPCV” or the “Office”) respectfully submits the following observations in relation to the 49 applications to participate in the proceedings in the situation in Uganda and in the case *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Raska Lukwiya and Dominic Ongwen*.

2. Considering that the Single Judge ordered the transmission of the applications for participation to the Office of the Prosecutor (the “OTP”) and to the Defence in a redacted format, the Office is also filing, together with these observations, two separate annexes confidential *ex parte* – one for the situation and one for the case – including its legal assessment for each application.

II. Background of Proceedings

2. On 22 November 2006, Judge Mauro Politi has been designated as Single Judge on Victim’s Issues by the Pre-Trial Chamber II¹ seised of the situation in Uganda² and of the case of *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Raska Lukwiya and Dominic Ongwen*.

3. On 1st February 2007, the Single Judge rendered the “Decision on legal representation, appointment of counsel for the Defence, protective measures and time-limit for submission of observations on applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06”, in which

¹ See the “Decision designating a Single Judge on Victim’s issues”, No. ICC-02/04-01/05-130, 22 November 2006.

² See the “Decision assigning the situation in Uganda to Pre-Trial Chamber II” issued by the Presidency, No. ICC-02/04-1, 5 July 2004.

he requested the OPCV “to provide the Applicants with any support and assistance which may be necessary or appropriate at this stage of the proceedings.”³

4. In the same Decision, the Single Judge ordered the transmission of the applications for participation, in a redacted format, to the OTP and to the Defence for the purposes of rule 89(1) of the Rules of Procedure and Evidence (“the Rules”). He also requested both participants to submit their observations by 26 February 2007.⁴

5. In compliance with the Decision of 1st February 2007, the Office filed, on 5 February 2007, a “Request to access documents and material” (the “Request”), asking the Single Judge to be granted access to some documents and material contained in the situation and/or case records.⁵

6. On 6 February 2007, the OTP filed a request to lift the redactions from the Applications⁶ and on 15 February 2007 the OTP filed additional submissions to its request to lift redactions and requested an extension of time to provide its observations on the Applications.⁷

7. On 7 February 2007, the Single Judge issued the “Decision on ‘request to access documents and material’, and to hold a hearing *in camera* and *ex parte*” (the “Decision”) partly granting the motion.⁸

8. In the Decision, the Single Judge, *proprio motu*, also called the Office and the Victims Participation and Reparations Section for an *ex parte* and *in camera* hearing to

³ See the “Decision on legal representation, appointment of counsel for the defence, protective measures and time-limit for submission of observations on applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06”, No. ICC-02-04-01-05-134, 1st February 2007, par. 13.

⁴ *Ibid*, p. 19.

⁵ See the “Request to access documents and material”, No. ICC-02-04-01-05-149-Conf-Exp, 5 February 2007. This motion was filed as “Confidential, *Ex Parte*, OPCV only, Urgent”.

⁶ See the “Application to Lift Redactions From Applications for Victims’ Participation to be Provided to the OTP”, No. ICC-02/04-01/05-150, 6 February 2007.

⁷ See the “Prosecution’s further submissions supplementing its ‘Application to Lift Redactions From Applications for Victims’ Participation to be Provided to the OTP’, dated 6 February 2007, and request for extension of time”, No. ICC-02/04-01/05-208, 15 February 2007.

⁸ See the “Decision on ‘Request to access documents and material’, and to hold a hearing *in camera* and *ex parte*”, No. ICC-02/04-01/05-152, 7 February 2007. The unredacted version of the decision bears the reference number ICC-02/04-01/05-151-Conf-Exp.

be held on 12 February 2007, in order to discuss matters which are partly redacted in the public version of the Decision.

9. On 8 February 2007, the Prosecutor filed his "Application To Attend 12 February 2007 Hearing"⁹ in which he challenged the confidential and *ex parte* nature of the Request and of the Decision. The Prosecutor further requested to be permitted to attend the hearing in order to ensure that his interests would not be affected by the discussions leading to the decision on the OPCV's request to access documents and materials.

10. On 9 February 2007, the Single Judge rejected the Prosecutor's request to attend the confidential *ex parte* hearing.¹⁰

11. On 20 February 2007, the Single Judge rejected the OTP's request to lift the redactions.¹¹

12. On 21 February 2007, the *ad hoc* counsel for the Defence requested an extension of time to submit her observations on the Applications.¹² On 23 February 2007, the Single Judge granted the request extending the deadline for the submission of the observations until 28 February 2007 for the OTP, and until 6 March 2007 for the Defence.¹³

⁹ See the "Application To Attend 12 February 2007 Hearing", No. ICC-02/04-01/05-153, 8 February 2007.

¹⁰ See the "Decision on 'Prosecutor's Application to attend 12 February hearing'", No. ICC-02/04-01/05-155, 9 February 2007.

¹¹ See the "Decision on Prosecutor's 'Application to lift redactions from applications for Victims' Participation to be provided to the OTP' and on the Prosecution's further submissions supplementing such Application, and request for extension of time", No. ICC-02/04-01/05-209, 20 February 2007.

¹² See the "Defence Application for an extension to the time limit to respond to the 'Defence Observations on the Applications for Participation in the Proceedings a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06'", No. ICC-02/04-01/05-210, 21 February 2007.

¹³ See the "Decision on 'Requête de la Défense en extension de délai afin de répondre aux 'Observations de la Défense sur les demandes de participation à la procédure a/0010/06, a/0064/06 à a/0070/06, a/0070/06, a/0081/06 à a/0104/06 et a/0111/06 à a/0127/06'", No. ICC-02/04-01/05-211, 23 February 2007.

13. On 28 February 2007, the OTP submitted its observations under rule 89(1) of the Rules¹⁴ and on 5 March 2007 the Defence submitted its observations.¹⁵

14. On 16 March 2007, the Single Judge ruled on the OPCV's request to access documents and material.¹⁶

15. On 22 March 2007, the OTP submitted the "Prosecution's Request that the Warrant of Arrest for Raska LUKWIYA Be Withdrawn and Rendered Without Effect Because of His Death".¹⁷

III. Legal Basis for the Office to File Observations on the Applications for Participation

16. In its Decision of 1st February 2007, the Single Judge entrusted the Office with the task of providing support and assistance to the 49 applicants requesting to participate in the situation in Uganda and in the case of *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Raska Lukwiya and Dominic Ongwen*.¹⁸

17. In the same decision the Single Judge recognised that "*the mandate vested in the OPCV by the Regulations [of the Court] also encompasses forms and methods of assistance to victims which fall short of legal representation.*"¹⁹

18. The Office argues that by virtue of the Single Judge Decision dated 1st February 2007, the OPCV is under the obligation to provide support and

¹⁴ See the "Prosecution's Reply under Rule 89(1) to Applications for participation of Applicants a/0010/06 and a/0064/06 to a/0070/06 and a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06 in the Case of The Prosecutor vs. Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo and Dominic Ongwen", No. ICC-02/04-01/05-214 and No. ICC-02/04-01/05-214-Anx1, 28 February 2007.

¹⁵ See the "Observations de la Défense sur les demandes de participation à la procédure a/0010/06, a/0064/06 à a/0070/06, a/0081/06 à a/0104/06 et a/0111/06 à a/0127/06", No. ICC-02/04-01/05-216, 5 March 2007.

¹⁶ See the "Decision on the OPCV's 'Request to access documents and material'", No. ICC-02/04-01/05-222, 16 March 2007.

¹⁷ See the "Prosecution's Request that the Warrant of Arrest for Raska LUKWIYA Be Withdrawn and Rendered Without Effect Because of His Death", No. ICC-02/04-01/05-230, 22 March 2007.

¹⁸ See *supra* note 3, par. 13, as well as the operative part of the Decision.

¹⁹ *Ibid.*

assistance to the 49 applicants in any form it considers necessary and/or appropriate at this stage of the proceedings.

19. The Office considers that the Decision of the Single Judge dated 1st February 2007 entails (i) the assistance to the potential victims in the process of the examination of their applications for participation, which includes the possibility to provide the Chamber with legal arguments on the admissibility of the applications; and, (ii) the provision to the Chamber of any assessment and/or information that could be useful in the process of the examination of the applications.

20. Recently, the Principal Counsel undertook a mission in Uganda in order, *inter alia*, to provide legal assistance and legal advices to the applicants as well as to gather information useful for the examination of their respective applications. As a result of this mission, the Office is in a position to provide the Chamber with additional information useful for the assessment of the applications.

IV. The Right of victims to participate in the proceedings before the Court where their personal interests are affected

21. The Rome Statute grants victims of crimes falling under the jurisdiction of the Court explicit rights to submit observations and to have their views and concerns presented and considered "*where [their] personal interests are affected*" in accordance with article 68(3) of the Rome Statute.

22. The review of the numerous articles and rules which govern victims' participation in the proceedings before the Court reveals that victims' participation is not restricted in time.

23. In particular, article 68(3) of the Rome Statute provides that "[w]here 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."

24. This article does not make any difference between the different stages of the proceedings before the Court, covering therefore the investigation of a situation.

25. The Office notes that article 15(3) and rules 50(1) and (3), and 107(5) of the Rules militate for this interpretation since victims are entitled to specific rights during the investigation phase. For example, article 15 of the Rome Statute provides that “[v]ictims may make representations to the Pre-Trial Chamber” when the Prosecutor concludes that there is a reasonable basis to proceed with an investigation and submits a request for authorisation of an investigation to the Pre-Trial Chamber. At this stage, no “case” – in the sense of a specific set of facts, purportedly committed by one or several individuals – exists. Therefore, it can be inferred that victims benefit from rights even before the investigation is even authorised by the Pre-Trial Chamber and accordingly, there is no reason to interpret article 68(3) of the Rome Statute in a narrow sense, which will contradict other provisions of the same text. A similar conclusion may be drawn from rule 92(2) of the Rules and regulation 86(6) of the Regulations of the Court, which specifically refer to “victims of the situation” in the context of participation in the proceedings.

26. This argument is supported by the examination of the preparatory works for the drafting of the Statute and of the Rules.

27. In particular, at the outset of the negotiations of the Rules, France suggested a large number of provisions dealing with practical aspects of the participation of victims. An important aspect of the French proposals was to make clear that participation could take place in all phases of the proceedings.²⁰ This approach was shared by others delegations which pointed out, in particular, that such participation could take place during the investigation stage.²¹

28. The question was addressed on several occasions during the discussion of the then Part 5 of the Rules (Investigation and Prosecution) and the Working Group

²⁰ See UN Doc. PCNICC/1999/DP.2, 1 February 1999, p. 7.

²¹ See for example, written comments made by Costa Rica, UN Doc. PCNICC/1999/WGRPE/DP.3, 24 February 1999 and by Colombia, UN Doc. PCNICC/1999/WGRPE/DP.37, 10 August 1999.

dealing with the issue decided that a comprehensive discussion on the participation of victims in the proceedings was necessary.²²

29. Before the comprehensive discussion was held in the Preparatory Commission, experts met at the Paris Seminar on Victims in April 1999, where the basic model for rules 89 to 91 was developed.²³

30. The model developed during the Paris Seminar was used as the basis for the discussions during the Preparatory Commission,²⁴ which were mainly conducted in informal meetings after a comprehensive discussion held during its second session.

31. The delegations reached the conclusion that provisions on participation of victims should have been brought under a general scheme and a general formula was introduced to embrace dispersed references to such right of participation.²⁵

32. Pursuant to Article 68(3) of the Rome Statute, victims can participate in the proceedings only “[w]here their personal interests [...] are affected.” This criterion is met at the investigation phase since victims have a personal interest in providing information to the Court.

33. This position finds support from the broad definition of victims under rule 85 of the Rules which does not specify any limitation for participation, but merely links the term “victim” to the commission of a crime falling under the jurisdiction of the Court.

²² See the numerous *Nota Bene* to rules relating to Part 5 in the Report on the first session, UN Doc. PCNICC/1999/L.3/Rev.1, 2 March 1999. Pending this discussion, the French proposals relating to victims’ participation in different rules were inserted in the Coordinator’s discussion paper without any debate on their content.

²³ See Rule A to C in Workshop 2 in UN Doc. PCNICC/1999/WGRPE/INF/1, 6 July 1999.

²⁴ See Rule 6.30, A to C in the Coordinator’s discussion paper, UN Doc. PCNICC/1999/WGRPE/RT.5/Rev.1, 11 August 1999. In addition, other proposals were taken into account, including an elaborated scheme outlined by Spain in the informal consultations, according to which a distinction should be drawn between participation before and after the issuance of a warrant of arrest or a summons to appear, *i.e.* before and after a ‘case’ would start before the Court.

²⁵ See in particular the so-called Mont Tremblant document, UN Doc. PCNICC/2000/WGRPE/INF/1, 24 May 2000. The formula used was: “victims or their legal representatives participating in the proceedings pursuant to rules [89 to 91].” For a comprehensive overview of the Preparatory Works, see BITTI (G.) and FRIMAN (H.), “Participation of Victims in the Proceedings”, in LEE (R.S.) (ed.), *The International Criminal Court, The Making of the Rome Statute Issues, Negotiations, Results*, Kluwer Law International, 1999, pages 456-474.

34. Various human rights documents also advocate for a broad approach to victims' participatory rights. The right of victims to be involved in criminal proceedings has generally been understood as being independent from the determination of the criminal responsibility of alleged perpetrators. This is illustrated by the notion of victim in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law²⁶ and in the Declaration of Basic Principles of Justice for Victims of Crime and Abuses of Power, which provides that *"a person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted [...]"*²⁷

35. Moreover, the European Court of Human Rights has acknowledged the right for victims and their relatives to be involved in the proceedings, including at the investigation stage.²⁸ The same approach has been taken by the Inter-American Court of Human Rights.²⁹

36. Finally, the Office notes that the participation of victims at the investigation phase will not jeopardise the proceedings in delaying their normal course nor will it affect the right of the suspect to a fair trial. Indeed, pursuant to article 56(1)(b) of the Rome Statute, the Pre-Trial Chamber is entrusted with the responsibility to *"ensure the efficiency and integrity of the proceedings and, in particular, to protect the rights of the defence"*. Moreover, the Chamber is responsible for defining the scope and the modalities of the participation of victims and in doing so it will assess that such participation is not prejudicial to or inconsistent with the rights of the suspect and a fair and impartial trial.

²⁶ See, the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law", Adopted by the United Nations General Assembly, Resolution 60/147 of 16 December 2005.

²⁷ See the "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power" adopted by the United Nations General Assembly, Resolution 40/34 of 29 November 1985, at point A.2

²⁸ See ECHR, *Kılıc v Turkey*, Application No. 22492/93, 28 March 2000, par. 91-93, *Kaya v Turkey*, Application No. 22729/93, 19 February 1998, par. 106-107.

²⁹ See IACHR, *Blake v. Guatemala*, Judgement, Series C no. 36, 24 January 1998.

37. The Office notes that the personal interests of the 49 applicants are affected in general during the investigation phase, since their participation can serve to clarify the facts and to assist the Court to fight impunity. At this stage, they have a legitimate interest that the persons allegedly responsible for the crimes from which they suffered be identified and consequently sought for by the Court. The outcome of the investigation is also relevant for victims because it could have repercussions on the reparation proceedings.

38. Therefore, the Office argues that the applicants should be allowed to participate in the situation, including during the investigation phase. Indeed, the Rome Statute and the Rules provide for a right of victims to participate in *"the proceedings before the Court"* and such terms should not be confined to those activities that require judicial involvement and that are carried out after the issuance of a warrant of arrest or a summons to appear. In fact, *"there are numerous instances where the term 'proceedings' is used to refer to the investigation of a situation (or to activities related to the investigation of a situation), and even to the activities that take place during the triggering proceedings, irrespective of judicial involvement in their performance."*³⁰

V. The Requirements for Granting the Status of Victim in the Situation and in the Case

39. A situation before the Court is generally defined in terms of temporal and territorial scope and includes events which could qualify as crimes under the jurisdiction of the Court but for which no alleged perpetrator has yet been identified or sought by the Court. On the other hand, a case comprises specific events during which one or more crimes falling under the jurisdiction of the Court seem to have been committed by one or more identified suspects sought by the Court.

³⁰ See OLÁSULO (H.), *The Triggering Procedure of the International Criminal Court*, Martinus Nijhoff Publishers, Leiden/Boston, 2005, p. 108. See also the "Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6" (PTC I), No. ICC-01/04-101-Corr, 17 January 2006, par. 32-34, pp. 9-10 and par. 38, p. 11.

40. Rule 85(a) of the Rules defines the term “victim” as “*natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court.*” Sub-rule (b) refers to “*organizations and 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 purpose.*”

41. In accordance with this definition, each applicant, in order to be granted the status of victim, ought to be a natural or moral person who has suffered a harm which shall be related to a crime within the jurisdiction of the Court.

42. The Office considers that concerning a moral person the limitation is strictly conceived since only a direct harm to the property dedicated to specific purposes which are, to certain extend, exhaustively enumerated in rule 85(b) of the Rules will be admissible. *A contrario*, such limitation should not apply to natural persons. Consequently, the harm can be direct or indirect.

43. More specifically, the Office is of the view that in a situation, the applicant has to show that the harm suffered is linked to a criminal conduct falling under the jurisdiction of the Court. Regarding a case, the applicant has to show that the harm suffered is directly linked to the crimes set out in the warrants of arrest or that the applicant has suffered a harm resulting in his/her intervention to assist the direct victims in the case or to prevent these persons from becoming victims as a result of these crimes being committed.³¹

VI. Assessment of the 49 Applications for Participation in the Situation

³¹ In this sense, see “Decision on the Applications for Participation in the Proceedings of a/0001/06, a/0002/06 and a/0003/06 in the case *the Prosecutor v Thomas Lubanga Dyilo* and the investigation in the Democratic Republic of Congo” (PTC I), No. ICC-01/04-01/06-228, 28 July 2006, p. 9. See also “Décision sur les demandes de participation à la procédure a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 dans le cadre de l’affaire le Procureur c. Thomas Lubanga Dyilo” (PTC I), No. ICC-01/04-01/06-601, 20 October 2006, p. 9.

44. The Office is of the view that 48 out the 49 applicants should be granted the status of victims within the situation.

45. All the applicants requested to participate at all stages of the proceedings. Each one of them is a natural person in accordance with rule 85(a) of the Rules, and has suffered specific harms related to the situation in Uganda and which can be linked with crimes under the jurisdiction of the Court.

46. Applications a/0010/06, a/0064/06, a/0081/06, a/0082/06, a/0084/06, a/0087/06, a/0100/06, a/0104/06, a/011/06, a/0113/06, a/0116/06, a/0121/06 and a/0127/06 are made by persons acting with the consent of the victim or on behalf of the victim in accordance with rule 89(3) of the Rules.

47. In relation to the alleged harms suffered, the Office notes that the term is not defined in the Statute or in the Rules. It is therefore necessary to interpret the term on a case-by-case basis.

48. For the purposes of explaining the harms suffered, the Office considers that the applicants can be divided into two main groups: persons who suffered harms as a consequence of an attack allegedly perpetrated by the Lord Resistance Army (the "LRA"), and persons who were abducted and consequently enlisted or conscripted or used to participate in hostilities or otherwise tortured and mistreated.

49. Applicants a/0010/2006, a/0081/06, a/0090/06, a/0094/06, a/0095/06, a/0097/06, a/0098/06, a/0100/06, a/0102/06, a/0103/06, a/0111/06, a/112/06, a/0113/06, a/0116/06, a/0117/06, a/118/06, a/0119/06, a/0120/06, a/0121/06, a/0122/06, a/0123/06 and a/0124/06 fall under the first category.

50. Applicants a/0064/06, a/0065/06, a/0066/06, a/0067/06, a/0068/06, a/0069/06, a/0070/06, a/0082/06, a/0083/06, a/0084/06, a/0085/06, a/0086/06, a/0087/06, a/0088/06, a/0089/06, a/0091/06, a/0092/06, a/0093/06, a/0096/06, a/0099/06, a/101/06, a/104/06, a/0114/06, a/0115/06, a/0117/06 a/0119/06, a/0120/06, a/0123/06, a/0125/06, a/0126/06 and a/0127/06 fall under the second category. Some of the applicants falling under this second category were military trained and participated in hostilities. Others

were used to carry heavy loads and/or guns and/or forced to undertake tasks not directly linked to the conduct of hostilities. Some were raped and/or sexually enslaved. All were seriously beaten and/or tortured.

51. Applicants a/0117/06, a/0119/06, a/0120/06 and a/0123/06 fall under both categories. Therefore, the Office argues that these four applicants shall be included in both groups so that their different interests may be adequately taken into account.

52. Applicants falling under the first category allegedly suffered and still suffer from, *inter alia*, physical and moral harms, amounting to the loss of family members, burning of properties, burning of parts of the body, wounds and/or mutilation, emotional suffering caused by the shock of the attack and/or by the loss of family members and properties as well as material losses.

53. Applicants falling under the second category allegedly suffered and still suffer from, *inter alia*, physical and moral harms amounting to wounds and/or mutilation, constant fear of being apprehended again, back pain for the carrying of heavy loads or guns, emotional suffering caused by the shock of the atrocities they were forced to watch, by being separated from their community, by the disruption or lack of education and by the contraction of diseases.

54. The Office notes that international instruments recognise “emotional suffering” and “economic loss” as forms of harm. In particular, the “Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power”³² 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 humanitarian law.”³³

55. The European Court³⁴ and the Inter-American Court of Human Rights³⁵ also recognise harm for emotional suffering and economic loss.

³² *Op cit supra* note 26.

³³ *Op cit supra* note 26.

³⁴ See ECHR, *Aksoy v Turkey*, Judgement, Application No. 21987/93, 18 December 1996, par. 113; ECHR, *Selmouni v France*, Judgement, Application No. 25803/94, 28 July 1999, par. 123; ECHR, *Ayder*

56. Furthermore, the Office recalls reports and studies on the impact of armed conflict on children which conclude that armed conflict affects all aspects of child development – physical, mental and emotional. Children who have experienced traumatic or other events in times of war, may, as a result, suffer from increased anxiety about being separated from their families, or they may have nightmares or trouble sleeping. They may cease playing and laughing, lose their appetites and withdraw from contact. Younger children may have difficulty to concentrate in school. Older children and adolescents may become anxious or depressed, feel hopeless about the future or develop aggressive behaviour. In periods of armed conflict, not only do children witness and participate in hostilities; they also suffer physical and mental wounds so that they have to learn to live with experiences such as separation from, or death of parents, interruption of education, the loss of confidence in people, the disintegration of the basic structures of society, loss of moral values, violence and destruction.³⁶

57. In relation to the alleged crimes, the Office notes that the applicants refer to events which took place on the territory of Northern Uganda after 1st July 2002. From the description of these events, it is possible to assert that the alleged facts fall under conducts which are crimes under the jurisdiction of the Court, in particular, attacks to villages, murders, enslavement, torture or inhuman treatment, rape, pillaging and conscription or enlisting children under the age of fifteen years or using them to participate actively in hostilities. All these crimes are listed under articles 7 and 8 of the Rome Statute.

and others v. Turkey, Judgement, Application No. 23656/94, 8 January 2004, par. 141 ff.; and ECHR, *Keenan v United Kingdom*, Judgement, Application No. 27229/95, 3 April 2001, par. 138.

³⁵ IACHR, *Aloeboetoe v Suriname*, Judgement, Series C No. 15, 10 September 2003, par 52; IACHR, *El Amparo v Venezuela*, Judgement, Series C No. 28, 14 September 1996, par. 28-63.

³⁶ See *Promotion and Protection of the Rights of Children, Impact of Armed Conflict on Children*, UN Doc. A/51/306, 26 August 1996. See also, *Report of the Special Representative of the Secretary-General for Children and Armed Conflict*, UN Doc. A/61/275, 17 August 1996; *Report of the Special Representative of the Secretary-General for Children and Armed Conflict*, UN Doc. A/60/335, 7 September 2005. All the documents and reports on child soldiers are available at the following address: <http://www.un.org/children/conflict/english/home6.html>.

58. The events reported in the applications are corroborated sometimes by public sources, like reports by UN Agencies and/or NGOs, but also by the applicants themselves who describe the events in similar terms and provide names of witnesses.

59. In relation to the alleged crimes reported by the second category of applicants, the Office notes that applicants a/0067/06 and a/0089/06 point out facts occurring before the entry into force of the Rome Statute, namely before the 1st July 2002.

60. However, as far as applicant a/0067/06 is concerned, the Office notes that part of the events took place after 1st July 2002 and therefore part of the alleged crime falls under the jurisdiction of the Court.

61. In relation to applicant a/0089/06, the Office notes that there are no supporting evidence that part of the events took place after 1st July 2002 and therefore the Office is of the view that the person cannot be granted the status of victim in the situation.

62. The Office concludes that the status of victims in the situation should be granted to all applicants with the exception of applicant a/0089/06. All the applicants fulfil the requirements set out in rule 85(a) of the Rules: they are natural person who suffered harms qualified as emotional suffering, physical and moral suffering, material damages and losses and that there are grounds to believe that the crimes described in their applications fall under the jurisdiction of the Court and where committed on the territory of Northern Uganda after 1st July 2002.

VII. Assessment of the 49 Applications for Participation in the Case

63. The Office is of the view that 21 out the 49 applicants should be granted the status of victims within the case.

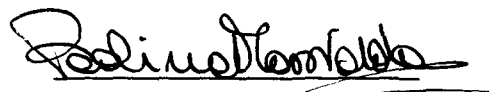
64. Applicants a/0010/2006, a/0081/06, a/0090/06, a/0094/06, a/0095/06, a/0097/06, a/0098/06, a/0100/06, a/0103/06, a/0111/06, a/112/06, a/0113/06, a/0116/06, a/0117/06, a/118/06, a/0119/06, a/0120/06, a/0121/06, a/0122/06, a/0123/06 and a/0124/06 are natural persons who reported events which amount to crimes under the jurisdiction

of the Court and which are included in the warrants of arrest against Joseph Kony, Vincent Otti, Okot Odhiambo, Raska Lukwiya and Dominic Ongwen.

65. There are grounds to believe that the harms suffered by the applicants – consisting in physical and material damages as well as emotional suffering – are linked to the crimes as described in the warrants of arrest against Joseph Kony, Vincent Otti, Okot Odhiambo, Raska Lukwiya and Dominic Ongwen.

For the foregoing reason, the Office respectfully requests the Pre-Trial Chamber II

- (a) to grant the status of victims to all applicants in the situation in Uganda with the exception of applicant a/0089/06;
- (b) to grant the status of victims in the case *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Raska Lukwiya and Dominic Ongwen* to applicants a/0010/2006, a/0081/06, a/0090/06, a/0094/06, a/0095/06, a/0097/06, a/0098/06, a/0100/06, a/0103/06, a/0111/06, a/112/06, a/0113/06, a/0116/06, a/0117/06, a/118/06, a/0119/06, a/0120/06, a/0121/06, a/0122/06, a/0123/06 and a/0124/06.



Paolina Massidda
Principal Counsel
Office of Public Counsel for Victims

Done in English.

Dated this 26 day of March 2007

At The Hague

The Netherlands