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PRE-TRIAL CHAMBER I

Before: **Judge Anita Ušacka, Single Judge**

SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO

Public Redacted Version of OPCD Observations on 28 victim applications

Source: **Office of Public Counsel for the Defence**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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1. Introduction

1.In its decision of the 17 August 2007, Pre-Trial Chamber I ordered the Registry to transmit non-redacted applications to participate as victims in the situation phase to the Office of Public Counsel for the Defence (OPCD), and granted the OPCD the right to file observations in relation to these applications within 30 days.[1] On 20 August 2008, the Registry transmitted 28 applications to participate as victims in the DRC situation to the OPCD.

2. Preliminary observations

2.1 The issue of the modalities and parameters of victim participation is currently under appeal.

2.The Honourable Single Judge noted in the decision of 3 July 2008[2] that the appeals of the OPCD and OTP concerning victim participation at the situation phase and the evidentiary requirements for moral harm were still pending before the Appeals Chamber, and indicated that depending on the outcome of the appellate proceedings, there may be a need to modify any decision concerning victim participation which has been issued in the interim. The OPCD would respectfully request that the Honourable Single Judge adopt the same approach with regard to future re-consideration *vis à vis* the applications currently under assessment.[3]

2.2 The scope of rule 89(2)

3.All 28 applications under consideration have been considered and rejected for various reasons by the Chamber, and have now been re-filed under Rule 89(2), which permits a rejected applicant to resubmit their application later in the proceedings. In this regard, the OPCD respectfully submits that the purpose of rule 89(2) is to permit an applicant to reapply if the first application was missing requisite information, the personal interests of the applicant were not at that stage engaged by the proceedings but a link has subsequently arisen, or the Chamber had held that the applicant's participation was inappropriate at the previous stage of the proceedings.- However, the OPCD submits that it should not be utilised as a self-serving mechanism to enable applicants who did not meet the definition of victim under rule 85 to modify the details of their

[1] 'Decision on the Requests of the Legal Representatives of Applicants on application for victims' participation and legal representation.' ICC-01/04-374, 20 August 2007, at p. 23.
[2] 'Decision on the applications for participation filed in connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/0163/06 to a/0187/06, a/0221/06, a/0225/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241/06 to a/0250/06', ICC-01/04-505, 3 July 2008, at para. 4.
[3] The OPCD notes that the following applications would fall within the OPCD's appellate submissions concerning the evidentiary requirements for moral harm: a/0006/06, a/0039/06, a/0073/06, a/0110/06, a/0144/06 and a/0160/06.

application so as to conform to this definition,[4] or to ensure that a link is established to the events set out in the charges against a particular accused.[5]

4.In this regard, the Pre-Trial Chamber has previously emphasised that in order to satisfy the evidentiary threshold to be accepted as a victim, it was only necessary for the applicants to establish, on a *prima facie* basis, that they suffered harm as the result of an offence under the Rome Statute. The OPCD observes that a *prima facie* threshold "exists in this situation where the material facts pleaded [...] constitute a credible case which would (if not contradicted by the accused) be a sufficient basis to convict him of that charge."[6] However, as matters rest now with many of the applications, the Chamber is faced with two or more self-contradictory versions of the alleged events, or the characteristics (in terms of age) of the applicant. The OPCD thus submits that an applicant who contradicts himself or herself is incapable of sustaining a *prima facie* case.[7] This is particularly the case in circumstances in which the Chamber and the parties are unable to examine the applicants in relation to the inconsistencies or the credibility of the applicant. The OPCD therefore submits that the Chamber should dismiss *in limine* any information which has not been provided in a consistent or explicable manner and which therefore lack the required 'intrinsic coherence'.[8]

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[4] 6 applicants have changed their date of birth (dob) and of the date of their recruitment suspiciously bringing them within the criteria for classification as a child soldier.[Redacted].

[5] [Redacted] After the Pre-Trial Chamber issued its decision not to confirm any charges against Thomas Lubanga Dyilo for events occurring after 13 August 2003, several applicants opted to change the date of the alleged events from 2003 to 2002. For example, a/0227/06 has changed the date of the alleged events from 5 September 2003 (a very precise date) to February 2002 until end of 2002. A direct consequence of these amendments is that the applicant would apparently have been under the age of 15 at the time of the alleged events, which now fall within the time period of the Lubanga charges. Applicant a/0078/06 describes events happening in his first application in August 2003 but in the re-filed application has changed the date to August 2002. Applicant a/0229/06 changes the date of events from 2003 to 2002, and a/0238/06 mentions the date of July 2003 in the first application but now declares in the re-filed application that events happened from July 2002.

[6] Report of the International Law Commission on the work of its forty-sixth session, 2 May - 22 July 1994, Official Records of the General Assembly, Forty-ninth session, Supplement No. 10, Doc. A/49/10, Yearbook of the International Law Commission 1994, Vol II(2), at 48. http://untreaty.un.org/ilc/documentation/english/A_49_10.pdf

[7] For example, in the case of Togcu v. Turkey, the European Court of Human Rights dismissed a complaint because of the fact that the applicant and his family had provided inconsistent statements, and had not provided any explanation in relation to the discrepancies. Case of Togcu v. Turkey (Application No.27601/95) Judgment 31 May 2005, paras 93-96.

In comparable regimes where victim applications can be re-submitted and considered, such as the Committee for Torture, United Nations High Commission for Human Rights, applications are declared inadmissible for abuse of the right of submission where false information has been provided (See Article 22 of the Convention against Torture at the Office of the High Commissioner of Human Rights http://www.unhchr.ch/html/menu3/b/h_cat39.htm) and further, any inconsistencies are taken into consideration when deciding on admissibility (See the Procedures of the Human Rights Committee and the Committee Against Torture – A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies at p.33/102 The CAT Committee has stated that it "attaches importance to the explanations for …inconsistencies given by the complainant",(*Ahmed Karoui v. Sweden* (CAT 185/01), § 10) as well as a person's failure to explain inconsistencies. (*H.K.H v. Sweden* (CAT 204/02), § 6.3)).

[8] Such an approach would be consistent with the recent decision of the Single Judge in the Katanga and Ngudjolo case, in which the Single Judge dismissed applications which included inconsistent dates on the basis that these applications lacked intrinsic coherence': Public Redacted Version of the Decision on the 97

2.2 Issues relating to the integrity of the procedure for filling out the forms

5.In its observations of 31 August 2007, the OPCD referred to the intrinsic unreliability of relying on written statements which are transcribed in a language which is not understood by the applicant, and in the absence of any information concerning the qualifications of the interpreters utilised during the process.[9] Although the Honourable Single Judge dismissed the OPCD argumentation on these points as being either irrelevant, or going beyond the scope of the application process,[10] the OPCD respectfully submits that the current applications clearly demonstrate the inutility and potential for miscarriages of justice which may occur if the applicants are required to submit signed applications in a language which they do not understand.

6.In this regard, several applicants have adduced new information which conflicts with the initial contents of their respective application forms, and have sought to explain the discrepancy in dates or details by reference to mistranslation or confusion due to the fact that the applicant did not fully understand either the interpreter or the person who was assisting them to complete the form. Accordingly, by failing to address this key issue of translation, the Court invites the possibility that either the applicants may indeed by misinterpreted, in which case their right to effectively participate can be jeopardized, or the applicants might use issues of mistranslation as a basis to effectively rewrite their applications to comply with any judicial findings.

7.In her decision of 10 March 2008, the Honourable Single Judge recognized that the Chamber may, in exceptional circumstances, reconsider a previous decision.[11] The OPCD further observes that in the DRC situation, a full bench of the Pre-Trial Chamber has previously reconsidered, and reversed a previous decision of a Single Judge, notwithstanding the absence of exceptional circumstances.[12] In terms of whether this standard has been met in the current circumstances, the

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Applications for Participation at the Pre-Trial Stage of the Case, ICC-01/04-01/07-579, 10 June 2008, at para.92. The OPCD observes that the term 'intrinsic' has been employed in connection with victim participation in the following manner: "the accounts of injured persons must above all else contain certain 'intrinsic' elements (completeness, coherence, congruity, sobriety) and, in addition be accompanied (if possible) by some form of 'independent verification' supporting their reliability": Ralph Henham and Grazia Mannozzi "Victim Participation and Sentencing in England and Italy: A Legal and Policy Analysis" European Journal of Crime, Criminal Law and Criminal Justice, Volume 11, Number 3, 2003, pp. 278-317(40), at pages 289-290.

[9] 'Request for the Single Judge to order the production of relevant supporting documentation pursuant to Regulation 86(2)(e)', 31 August 2007, ICC-01/04-382 at para 72- 80. See also ' Observations du Bureau du Conseil Public pour la Défense sur les demandes de participation conformément à l'Ordonnance de la Chambre préliminaire I en date du 24 août 2007 'Order concerning the transmission of further information on victim's application'', ICC-01/04 Conf, 25 Septembre 2007, para 22.

[10] 'Decision on the Requests of the OPCD on the Production of Relevant Supporting Documentation Pursuant to Regulation 86(2) (e) of the Regulations of the Court and on the Disclosure of Exculpatory Materials by the Prosecutor', ICC-01/04-417, 7 December 2007.

[11] 'Decision Establishing a Calendar in the Case against Germain Katanga and Mathieu Ngudjolo Chui', 10 March 2008, at p. 5.

[12] 'Decision on the Requests of the Legal Representative of Applicants on application process for victims' participation and legal representation', ICC-01/04-374, 17 August 2007, which reversed the 'Decision authorising the filing of observations on applications for participation in the proceedings', 17 July 2007, ICC-01/04-358.

OPCD submits that the decision of the Single Judge to reject the OPCD request for information concerning interpretation credentials was heavily predicated on the argument that participating victims engage in the proceedings in a very different manner than witnesses appearing for a party, and as such, the procedural safeguards which apply to witness statements and testimony do not necessarily apply to victims. This legal proposition has however been radically affected by subsequent findings by the Pre-Trial Chamber and the Trial Chamber that participating victims could also testify as witnesses,[13] and the Appeals Chamber's decision of 11 July 2008 in the Prosecutor v. Thomas Lubanga Dyilo, in which the Appeals Chamber confirmed that participating victims could potentially tender evidence concerning the alleged responsibility of the defendant.[14]

8.The OPCD further notes that the fact that applicants participating as victims, can subsequently testify as witnesses, potentially triggers the application of rule 76 in relation to any applications previously submitted to the Court.[15] In this connection, the OPCD observes that the Trial Chamber has issued a decision to the effect that "the arguments are wholly persuasive that the statements of witnesses should be compiled by way of recorded interviews, which are contemporaneously reduced into statement form in one of the working languages of the court and in the first language of the witness (or if this is impractical, a language he or she can easily understand) if the witness's native language, or one they readily comprehend, is not French or English. This will ensure that there is no doubt as to what the witness said at the time, and it will

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In addition, despite rejecting the OTP request for reconsideration of the15 May 2006 decision concerning E-Court protocol, the Pre-Trial Chamber in fact revised this decision on at least two subsequent occasions: Final Decision on the E-Court Protocol for the Provision of Evidence, Material and Witness Information on Electronic Version for their Presentation During the Confirmation Hearing 28 August 2006, ICC-01/04-01/06-360; Decision on the Prosecution Request for Extension of Time, Clarification and Provision of Information, 1 September 2006, ICC-01/04-01/06-376

[13] See for example**, '**Decision on the Application for Participation of Witness 166', ICC-01/04-01/07-632, 23 June 2008; and 'Decision on certain practicalities regarding individuals who have the dual status of witness and victim', 5 June 2008**,** ICC-01/04-01/06-1379.

[14]**'**Judgment on the appeals of the Prosecutor and the Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008', 11 July 2008, ICC-01/04-01/06-1432.

[15] The Defence for Thomas Lubanga Dyilo has requested the Trial Chamber to order the disclosure of any applications for participation or reparation which have been submitted by Prosecution witnesses: 'Requête de la Défense aux fins de divulgation des demandes de participation ou de réparation présentées en qualité de victimes, par les témoins du Procureur et de toutes autres déclarations faites par lesdits témoins et non divulguées à ce jour', 11 June 2008, ICC-01/04-01/06-1393. Whilst there has been no decision on this request, the OPCD notes the ICTY Appeals Chamber has held that a witness statement, which invokes the Prosecutor's disclosure obligations under the equivalent version of rule 76, is constituted of an "account of a person's knowledge of a crime, which is recorded through due procedure in the course of an investigation into the crime". Prosecutor v. Blaskic, Case No. IT-95-14-A, Decision on the Appellant's Motion for the Production of Material, Suspension or Extension of the Briefing Schedule, and Additional Filings, 26 September 2000, at para. 15 This definition is "is broad enough to include statements taken by humanitarian organisations for the purpose of recording allegations of human rights abuses, when these are passed to the Prosecution in order to assist it in identifying potential lines of inquiry which then result in the persons who gave the original statements becoming witnesses in Tribunal proceedings." Prosecutor v. Milutinovic, 'Decision On Ojdanic Motion For Disclosure Of Witness Statements And For Finding Of Violation Of Rule 66(A)(ii)', 29 September 2006, at para 14.

reveal whether he or she agrees with the way the account has been set out in the statement."[16] Whilst the current applicants might not necessarily be listed as Prosecution witnesses for the purposes of the Katanga and Ngudjolo case, or the Thomas Lubanga Dyilo case, it cannot be completely excluded that they may be called in the future either as Defence witnesses, or as Prosecution witnesses in other cases, such as the Ntaganda case.

9.The OPCD further submits that it would not be beyond the resources of intermediaries working in the field to audiotape the applications of applicants who are illiterate, or who do not understand one of the working languages. In the event that the applicant subsequently contests the accuracy of the contents of their application, "[a]ny divergence in content between the statements as recorded in the two languages can be resolved by listening to the tape of the interview."[17] In addition, in light of the fact that an interpreter is present in any case for those applicants who do not understand French, it would also be possible for literate applicants to complete their responses in a language which they understand, whilst the interpreter contemporaneously prepares a version in one of the working languages of the Court.

10. A further issue which the OPCD respectfully submits may warrant reconsideration on the part of the Honourable Pre-Trial Chamber is the question of to what extent applicants can be present or directly participate in the application process of other applicants. In this regard, the OPCD notes that the Trial Chamber in the Thomas Lubanga Dyilo case endorsed the recommendation set out in the Protocol on the practices to be used to prepare and familiarise witnesses, prepared by the Victims and Witnesses Unit, that witnesses should be directed not to discuss their evidence with other witnesses, and further explained the possible consequences which could result if they decide to do so.[18] The underlying objective of such a recommendation – to preserve the witness's testimony from contagion or influence - will essentially be frustrated if the victim/witnesses are permitted, in the context of the situation phase, to discuss the contents of any application that they have submitted with other victim/witnesses or applicants, or to act as witnesses for the application process of other applicants.[19]

2.3 The Existence of Potential Conflict of Interest

11. It appears from the additional information provided by applicants that in addition to acting as the Legal Representative for several applicants and participating victims, Mr. Joseph

[16] 'Decision regarding the Protocol on the practices to be used to prepare witnesses for trial', 23 May 2008, ICC-01/04-01/06-1351, at para 36.

[17] ICC-01/04-01/06-1351 at para. 36.

[18] The VWU recommendation is set out at para 4 of ICC-01/04-01/06-1351. At paragraph 32, the Trial Chamber concluded that "[t]he critical requirement is that if witnesses are housed or travel together, regardless of the extent to which their accounts overlap, they should be warned with appropriate regularity that they must not discuss their impending evidence with each other (or anyone else)."

[19] The OPCD observes in this regard that a/0155/06, a/0157/06 1/0160/06, and a/0203/06 all live [Redacted], and have all submitted similar allegations. In addition, a/0221/06, a/0224/06, a/0226/06, a/0227/06, a/0229/06, a/0230/06 and a/0236/06 all fall under the guardianship of the same person [Redacted].

Keta also occupies the post of [Redacted], which has assisted many of the victim applications under consideration by the ICC. The OPCD submits that in light of the wide ambit of Mr. Keta's participation, further clarification is needed in order to ensure that there are no potential conflicts of interest between his roles of representative and [Redacted] to such victims, which may either necessitate full disclosure of such conflict to all interested parties or even withdrawal from representation. The OPCD respectfully submits that the application of Articles 12,[20] 16,[21] and 26 of the Code of Professional Conduct for Counsel are invoked in these circumstances, in light of the fact that Mr. Keta is contemporaneously providing legal representation to different applicants who were participating in hostilities against each other.[22] It is difficult to ascertain how it could be asserted that no potential conflict of interest arises when a representative in one hearing deals with allegations attributing guilt to one party and then on a separate occasion is privy and participating in submissions attributing guilt to the opposing party. At the very least, written confirmation authorising the continued representation is required from the alleged victims and applicants concerned. The Court has previously responded to questions of potential conflict by ordering the separation of Counsel from his functions as legal representative until such conflict issues are resolved.[23]

12. Mr. Keta's duty to represent the interests of his clients in an independent[24] and impartial manner is also affected by the fact that he apparently also exercises the role of '[Redacted] as stated in the form of a/0221/06. Out of the 28 applications currently under consideration, 17 have been completed with the assistance of [Redacted].[25] Article 26(3) of the ICC Code of Conduct

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[20] Article 12 deals with impediments to representation stating that Counsel 'shall not represent a client in a case if the case is the same as or substantially related to another case in which counsel […] represents or formally represented another client and the interests of the client are incompatible with the interests of the former client, unless the client and the former client consent after consultation.'

[21] Article 16, which address more specifically the situation where a legal representative may have been appointed to represent a group of clients such as a number of victims, reads: "Where counsel has been retained or appointed as a common legal representative for victims or particular groups of victims, he or she shall advise his or her clients at the outset of the nature of the representation and the potential conflicting interests within the group. Counsel shall exercise all care to ensure a fair representation of the different yet consistent positions of his or her clients. 3. Where a conflict of interest arises, counsel shall at once inform all potentially affected clients of the existence of the conflict and either:
(a) Withdraw from the representation of one or more clients with the prior consent of the Chamber; or
(b) Seek the full and informed consent in writing of all potentially affected clients to continue representation."

[22] By way of illustration, Mr. Keta is the joint legal representative for a/0333/07 and a/0110/08 to whom the status of victim was awarded in the pre-trial stage of the Katanga and Ngudjolo case (ICC-01/04-01/07-357 and ICC-01/04-01/07-579). The Chamber found that both these applicants have shown on a prima facie basis that they were child soldiers recruited by the FRPI and FNI respectively and that they took part in alleged hostilities in Bogoro in February 2003. [Redacted]

[23] 'Decision on the provisional separation of Legal Representative of Victims a/0015/08, a/0022/08, a/0024/08, a/0025/08, a/0027/08, a/0028/08, a/0029/08, a/0032/08, a/0033/08, a/0034/08 and a/0035/08', 3 July 2008, ICC-01/04-01/07-660

[24] As required by articles 5 and 6 of the ICC Code of Conduct.

[25] Applicants a/0144/06, a/0155/06, a/0157/06, a/0160/06, a/0203/06, a/0227/06, a/0229/06, a/0230/06, a/0238/06. a/0240/06 were assisted with the completion of their application forms by [Redacted] and further, a/0221/06, a/0224/06, a/0226/06, a/0236/06, a/02237/06, a/0239/06 and a/0039/06 were initially approached by [Redacted] and assisted with the form.

also prohibits Counsel from continuing to communicate with unrepresented persons where a potential conflict of interest arises. Against this strict regime of procedure and protocol, the OPCD questions the propriety of his role as [Redacted]. The OPCD also notes that of these 17 applicants, 7 were initially approached by [Redacted]. Although there is nothing in the ICC Code of Conduct which expressly prevents the soliciting of clients, it is pertinent to point out that in many jurisdictions, domestic and international, codes of conduct specifically prohibit such contact.[26] The OPCD thus respectfully queries the impartiality of assistance provided by [Redacted] to applicants during the application process in circumstances in which a legal representative affiliated with the [Redacted] derives a significant financial benefit if the applicant is granted the status of victim in a particular case.[27] The OPCD further notes that [Redacted] has adopted a public stance to the effect that the charges against Thomas Lubanga Dyilo should be increased to incorporate sexual violence, slavery, torture and the burning of villages.[28] Similarly, [Redacted][29] [Redacted].[30] Such organisations can clearly not be described as neutral third party agents, and the OPCD is thus concerned this stance might influence the applications with which they have been involved.

13. Finally, the OPCD notes that its request for the Chamber to authorise an investigation into allegations of fabricated applications[31] is still pending. Identical concerns exist here in light if the incompatibility of the apparent political agendas of agents, who are commissioned to provide impartial assistance to applicants.

3.Observations on Specific Applications

3.3 Applicants, which the Single Judge declined to adjudicate due to pending requests to participate in the Thomas Lubanga Dyilo case[32]

14. In her decision of 24 December 2007, the Honourable Single Judge declined to adjudicate on the applications of a/0221/06, a/0225/06, a/0226/06, a/0237/06, a/0238/06, a/0239/06, a/0049/06, a/0050/06, and a/0227/06 on the basis that these applicants' requests to participate in the Thomas Lubanga Dyilo case were still pending before the Trial Chamber. The OPCV's

[26] See Article 30 of the ICTY Code of Conduct prohibiting Counsel from direct and indirect contact with prospective clients.
[27] Article 21(2) of the ICC Code of Conduct provides that "Counsel shall never make his or her fees contingent on the outcome of a case in which he or she is involved." The fact that in the current case, it is the Court who as made the payment of counsel's fees dependent on the outcome of the application (i.e whether the applicant is granted victim status) does not detract from the impact of such a practice on the ability of the counsel to conduct his duties to towards his client in an independent, and disinterested manner.
[28] [Redacted].
[29] a/0076/06 and a/0078/06 have been submitted with the assistance of [Redacted].
[30] [Redacted]
[31] Please see para. 14-17 of OPCD's Observations on the 3 July 2008 Pre-Trial Chamber I Decision entitled "Decision Authorizing the submission of Observations Pursuant to rule 89(1) of the Rules on Applications a/0332/07, a/0334/07 to a/0337/07, a/0001/08, a/0030/08 and a/0031/08" ICC-01/04-522. 18 July 2008
[32] ICC-01/04-423-Corr, at para 144.

subsequent request to appeal that aspect of the Single Judge's decision was rejected.[33] The OPCD further notes that the threshold for reconsideration has not been met since the Single Judge's finding of 24 December 2007 remains applicable: the application to participate in the Thomas Lubanga Dyilo case is still pending before the Trial Chamber. Whilst the Trial Chamber has stayed the proceedings, the case itself has not been terminated. Moreover, the Appeals Chamber is currently seised of a Prosecution appeal concerning the legality of the stay. The OPCD therefore respectfully submits that the resubmission of the application is unwarranted and premature

3.2 Applicants – acting in their own name- who were previously rejected due to failure to adduce a document which would establish the applicant's identity. [34]

Applicant a/0144/06

15. Although the applicant has now submitted proof of identification, in light of the fact that the applicant was not present when her spouse was allegedly killed, there is insufficient information to verify whether his death can be attributed to a alleged offence under the Rome Statute, nor, in light of the date of the offence (August 2004), can the events be linked to a general offence such as a concerted attack on a civilian population.

16. Finally, the OPCD notes that the alleged event is not linked to any of the current proceedings before the ICC, and that the Single Judge has no mechanism to verify whether the alleged event occurred, and whether the threshold elements for an offence under the Rome Statute have been met. In this regard, although a/0144/06 resided on [Redacted], the date provided by a/0144/06 differs from the other applicants. It is therefore open to conclude that the alleged destruction did not occur, or that it was an isolated event which did not occur in connection with an offence under the Rome Statute.

Applicant a/0155/06

17. In accordance with the details of the applicant's electoral card, the applicant resides at the same address as the house which was allegedly destroyed in May 2003. The threshold to establish wanton destruction must rise above superficial damage. The OPCD therefore submits in this regard that the alleged destruction did not occur, or did not meet the severity threshold to be considered a crime under the Rome Statute.

Applicant a/0157/06

[33] 'Decision on the Prosecution, OPCD and OPCV Requests for Leave to Appeal the Decision on the Applications for Participation of Victims in the Proceedings in the Situation', 6 February 2008, ICC-01/04-444

[34] Decision of 24 December 2007, ICC-01/04-423 Corr, at para 17 and para 26, and Decision on the applications for participation filed in connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/0163/06 to a/0187/06, a/0221/06, a/0225/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241/06 to a/0250/06', ICC-01/04-505, 3 July 2007, ICC-01/04-505 at para 36

18. The OPCD observes firstly, that from the details of the applicant's electoral card, it appears that the applicant continues to reside at the same address, which contradicts the applicant's description of her house as being 'destroyed'. In terms of the items which were allegedly taken from her house (furniture, goats, chickens, and iron from the roof), the OPCD submits that these items could easily fall within category of comestibles and potential armaments which may legally be taken, if required by military necessity. In this connection, the question as to whether items fall within the ambit of military necessity must be assessed from the perspective of the alleged perpetrator, and not the victim.[35] It is therefore not possible for the Chamber to render such a non case-specific assessment within the context of the situation phase.

a/0160/06

19. The applicant has submitted an electoral card, which has been destroyed such that the bar code, and top sections of the card have been torn off. The applicant has provided no explanation as to why the card is in such a state. In the absence of any justification concerning the state of the card, and in light of the possibility that the card could have been lawfully destroyed by the authorities due to invalidity, the OPCD respectfully submits that the degraded card does not constitute valid identification for the purpose of participation before the ICC.

a/0203/06

20. The photocopy of the electoral card which was subsequently submitted is of insufficiently high resolution to identify the features of the person. Moreover, the cord of the card in which the official number should be listed has been torn off. It is therefore not possible to verify whether the card is authentic, and whether it has been issued a proper identification number. In the absence of any explanation as to why the card has been partially destroyed, the OPCD respectfully submits that the degraded card does not constitute valid identification for the purpose of participation before the ICC. The OPCD further notes that additional information concerning the stage of the proceedings at which the applicant wishes to participant has been supplied by [Redacted], and not by the applicant herself. It is therefore not possible to verify whether the applicant has in fact consented to the provision of this information.[36]

21. As regards the details of the allegations (pillage, burning of the house), the OPCD observes that in light of the fact that the applicant was not present during the alleged events, the applicant is not in a position to verify whether the alleged burning and pillages was conducted by armed forces, as opposed to non-combatant criminal elements in the environs.

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[35] Oral rule 98*bis* decision, Prosecutor v. Oric, Transcript of 8 June 2005, page 9009 lines 16-21, page 9011, lines 10-14. http://www.un.org/icty/transe68/050608IT.htm

[36] The OPCD refers to its submissions at para 12-16 of its 'Observations du Bureau du Conseil Public pour la Défense sur les 28 demandes de participation en qualité de victimes du 12 Mai 2008, conformément à la décision de la Chambre Préliminaire I du 17 août 2007 intitulée: « Decision on the requests of the Legal Representative of Applicants on application process for victims' participation and legal representation »ICC-01/04-500-Conf, 12 June 2008.

a/0006/06

22. The applicant has subsequently attached an electoral card. In terms of the details of the alleged event (the death of his father), in light of the fact that the applicant does not appear to have been present at the time, he is not in a position to establish whether it occurred in connection with an offence under the Rome Statute (as opposed to an ordinary crime), and whether the threshold elements for an offence under the Rome Statute were met.

3.2.1 Applicants which have subsequently submitted an Acte de Naissance and Student Card as proof of identification/ birth

23. The OPCD notes that an Acte de Naissance may only be obtained within 30 days of the person's birth.[37] If a document is not obtained within this time period, it is necessary to obtain a declarative judgement,[38] and it is no longer possible to obtain an Acte de Naissance. The documents appended by the applicants, which appear to have been recently obtained, are thus legally invalid and potentially forged. The OPCD further notes that no supporting documentation is required in order to obtain a student card; student cards in particular are very susceptible to forgery.[39]

a/0221/06

24. The applicant has now submitted an 'Acte De Naissance' and student card, and in addition, has provided different details concerning the allegations. As regards the identification documents, both the act of birth and student card were obtained in September and November 2007 respectively; namely, after the observations of the OPCD were filed concerning the fact

[37] Code Civil: Les Personnes (RD Congo) Article 97 « Les déclarations de naissance sont reçues et les actes qui les constatent dressés par l'officier de l'état civil du lieu de la résidence du père ou de la mère. Les déclarations de décès sont reçues et les actes qui les constatent dressés par l'officier de l'état civil du lieu où le décès est survenu. Les actes de mariage ou les enregistrements des mariages célébrés en famille sont établis par l'officier de l'état civil du ressort du lieu de leur célébration. Pour les déclarations autres que celles visées aux alinéas précédents et certaines situations spéciales, la compétence est déterminée par le texte particulier qui les prévoit. » Article 98 « Sauf dispositions spéciales prévues par la loi, les actes de l'état civil doivent être rédigés dans le délai d'un mois du fait ou de l'acte juridique qu'ils constatent. » http://www.leganet.cd/Legislation/Code%20de%20la%20famille/LIVRE%20II%20-%20DE%20LA%20PERSONNE.htm#CHAPITRE_II

[38] Code civil de la RD Congo :Article 98 para 2 « Passé le délai légal, l'acte de l'état civil n'a que la valeur probante de simples renseignements; toutefois, il en sera autrement s'ils sont inscrits au registre en vertu d'un jugement déclaratif ou supplétif. »

[39] External research has shown that such identity cards are easily falsified, can be purchased in public places and are also frequently used by foreign students.Les enjeux électoraux en République Démocratique du Congo et les perspectives Journée de réflexion de la société civile; Jeudi 13 Octobre 2005 [...]: « -Carte d'élève :Elle se vent sur la place public (wenze,marchés par les enseignants) Elle est aussi détenue par des enfants des étrangers qui étudient dans notre pays. Comment alors une telle pièce peut-elle être une pièce de référence autorisée par la loi? N'est-ce pas de la légère? »http://www.societecivile.cd/node/2541

République démocratique du Congo (RDC): information sur la fréquence des documents d'identité, administratifs et judiciaires frauduleux et la possibilité de s'en procurer (février 2006). Direction des recherches, Commission de l'immigration et du statut de réfugié du Canada, Ottawa : « [...]il est l'ouvre notamment des ateliers du Quartier de Kalamu (Kinshasa). En effet, lors d'une visite dans le quartier précité, les participants à la mission ont pu voir à proximité de l'entrée du poste de police un atelier de fabrication de cartes d'identité (et autres documents) en pleine rue, ce à quelques mètres de l'atelier du photographe, qui tire des portraits plastifiés prêts à être fixés sur la carte... »
http://www.irb-cisr.gc.ca/fr/recherche/rdi/?action=record.viewrec&gotorec=449842

that the birth-date initially provided by the applicant ({Redacted]) would mean that the applicant was not a child soldier at the time of the alleged events. In the present case, the OPCD notes that the photograph on the student card has been affixed on top of the stamp, and, in accordance with the statement on the card to the effect that "Toute carte raturée ou surcharge est considerée comme falsifiée, donc sans valeur", must be considered invalid. The person who issued the student card ([Redacted]) also appears to have an undisclosed interest or role in the application process, as he also signed the applicant's additional declaration (page 28).

25. Of particular concern is the fact that the applicant has failed to provide a logical explanation as to why he submitted three different birthdates ([Redacted]). In a complementary declaration, the applicant submits that the different dates were given as the result of 'confusion'; however, the Court cannot reasonably accept that the applicant was 'confused' on three separate occasions. The application also completely lacks intrinsic coherence due to multiple inconsistencies and contradictions: for example, the applicant initially provides a very specific date of recruitment (9 January 2003), whereas in a later declaration he alleges to have been recruited in March 2002; in the initial application, the applicant stated that he was enlisted for only three months, whereas in his latter declaration, he alleges that he was recruited for at least ten months (March until December 2002). The OPCD also observes that the signature of the applicant in the additional declaration (page 28), greatly differs from the signature set out in the initial application (page 15).

a/0224/06

26. The applicant subsequently submitted additional information concerning the events, an Acte de Naissance, and a student card. The OPCD notes that the photograph of the applicant has also been affixed on top of the stamp on the student card. The student card was also issued by the same person ([Redacted]) who witnessed the additional declaration, and who would therefore appear to have an interest in the proceedings.

27. Both identification documents were also requested in later 2007, namely, after the OPCD observations were filed concerning the fact that the applicant failed to meet the criteria for the offence of enlistment or use of child soldiers by virtue of the fact that that the applicant was at least 15 years old at the time of the alleged events. The OPCD therefore submits that in assessing the intrinsic coherence of the application, the Honourable Chamber must take into consideration that whilst the applicant provided additional information in January and March 2007 concerning the stage of the proceedings at which the applicant wished to participate, and the details of his treatment during his enlistment, it was only after the filing of the OPCD's observations that the applicant sought to change the birth-date ([Redacted]). The applicant has sought to explain the inconsistency by stating that the initial application included an incorrect date because the

applicant did not know the precise date at the time. However, the applicant does not adequately justify why, if he did not know his birth-date, he provided such a precise date in his initial application (including day and month). The applicant also clearly signed the declaration in the initial application to the effect that « Je certifie que les informations figurant dans le présent formulaire sont exactes, dans la mesure de mes connaissances ». The Chamber can either conclude that the applicant intentionally provided incorrect information in the initial application, or is currently providing incorrect information. In either case, the OPCD respectfully submits that the applicant should be disqualified from participation.

28. The coherence of the application is also significantly affected by the following aspects of the application. The signature of the applicant in the additional declaration (page 30), appears to be manifestly different from the signature set out through the initial application. In terms of the details of the allegations, the applicant alleges in his additional declaration that he was recruited by [Redacted]. The OPCD has however found information which suggests that these persons were not associated with the [Redacted].[40] Moreover, his allegation of having participated in an attack in [Redacted], is not supported by any external documentation concerning such an attack.[41]

a/0225/06

29. The application has been resubmitted firstly, with a student card with no photograph, and an Acte de Naissance, secondly, with a completely different student card with a photograph affixed on top of the stamp. The applicant also alleges to have participated in an attack in [Redacted]. The OPCD refers to its observations above concerning a/0224/06. Finally concerning the allegations concerning his parents, in light of the fact that his mother had allegedly fled, there is insufficient information to determine firstly, how the applicant knew that his father had been killed, and secondly, on what basis he was able to ascertain that these acts were associated with an offence under the Rome Statute (as opposed to death by natural cause or as the result of an ordinary crime, or flight due to socio-economic factors).

a/0226/06

30. The application has been resubmitted firstly, with a student card with no photograph, and secondly, with a student card with a photograph, and an Acte de Naissance. In terms of the applicant's reference to his alleged recruitment by [Redacted], the OPCD refers to its submissions concerning a/0224/06.

a/0227/06

[40] [Redacted]
[41] [Redacted]

31. The applicant subsequently submitted a student card, which was obtained in 2007, and which refers to a different birth-date, and an additional declaration which amends the dates of the alleged events. The applicant has provided no explanation as to firstly, why he signed the declaration that the information in the initial application was true and correct to his best belief, and secondly, why he communicated with the Court on two previous occasions (17 January 2008, and 27 March 2008) to amend the details of this application without bringing to the attention of the Court the fact that his birth-date and date of recruitment may have been incorrect. The OPCD therefore submits that in light of such significant inconsistencies, the application lacks intrinsic coherence. In any case, in the absence of any precise dates concerning his recruitment and the hostilities in which he allegedly participated during 2002, it is not possible to verify whether the events in question fell within the temporal jurisdiction of the Court.

a/0229/06

32. In 2007, the applicant submitted an Acte de Naissance and student card without a photograph, both of which referred to his birth-date as being in [Redacted]. In an additional report submitted by [Redacted], it is alleged that the proper birth-date of the applicants is in fact [Redacted] (rather than [Redacted]). In his final supplement, the applicant submits an additional student card, which has a photograph affixed on top of the stamp, and bears no identification number. The student card was issued by the applicant's guardian/tutor, who, as mentioned above, is the [Redacted]. The OPCD respectfully submits that the student card is patently invalid.

33. Moreover, no explanation is provided in relation to the reason why the Acte de Naissance, student card, and initial application were incorrect as regards his birth-date. The OPCD observes in this regard that the applicant stated in his initial application that he possessed an electoral card, but failed to adduce it either then or subsequently. Moreover, in order to possess an electoral card, the applicant must have been at least 18 years old. The applicant submitted his initial application in September 2006. If the applicant was 18 years old in 2006, he would have had to have been born at the latest in 1988, which would mean that he would have been 15 years old in 2003. The OPCD further observes that in the applicant's latest declaration, despite having submitted additional information on two prior occasions (January and March 2008), the applicant suddenly changes the details of the allegations to conform to other applicants under the same tutelage; namely, that he was recruited in 2002. In light of the applicant's failure to provide any logical justification for the multiple changes and inconsistencies in his different applications, the OPCD respectfully submits that the application completely lacks intrinsic coherence.

a/0230/06

34. The applicant stated in the initial application submitted in 2006 that he possessed an identity card. The OPCD therefore queries why the applicant procured a different identity card in 2007, whilst at the same time, asserting that the applicant's birth-date was [Redacted], rather than [Redacted] (which would have meant that the applicant was potentially 15 years old at the time of the alleged events). The applicant has provided no explanation for this discrepancy, and his assertion that he was born in [Redacted] is also not consistent with the fact that he identified himself as being [Redacted] years old in 2006. The OPCD further observes that whereas the applicant signed the initial declaration with a thumbprint in 2006, the additional declaration is signed with a signature. The OPCD therefore submits that the application lacks intrinsic coherence.

a/0236/06

35. The applicant subsequently submitted a student card, in which the birth-date of the applicant has been changed from [Redacted] to [Redacted]. The applicant has sought to explain the discrepancy by arguing that there was poor communication during the initial application process; however, the applicant does not explain why he did not correct this miscommunication when additional information concerning his application was submitted on his behalf in 2007. The OPCD respectfully submits that the application completely lacks intrinsic coherence and should therefore be dismissed.

a/0237/06

36. The applicant has subsequently submitted a student card with the photograph affixed on top of the stamp. The OPCD refer to its submissions above concerning the unreliability of such documentation, particularly when requested for the purposes of litigation. Such unreliability is enhanced by the fact that the school director who issued the student card is the guardian of a/0237/06 (and as the person who submitted the applicant on behalf of the alleged victim, was directly involved in the proceedings). In terms of the details of the allegations, the applicant alleges to have been recruited in July 2002 from [Redacted], along with other children. The date provided by the applicant contradicts the date provided by other applicants who were allegedly recruited from [Redacted]. If the applicant had indeed been recruited in early 2002 (which was the case for the others), than his recruitment (which allegedly lasted for three months) would fall outside the temporal jurisdiction of the ICC. In terms of the applicant's reference to [Redacted], the OPCD refers to its submissions above.

a/0238/06

37. The application has been resubmitted with a student card, with the photograph of the alleged victim affixed on top of the stamp, which was issued by the applicant as the director of the school. The second student card which has been submitted does not appear to be complete: it has no identification number, and most of the fields have not been completed. The OPCD further observes that the applicant has submitted a proof of parental relationship, which refers to him as being the maternal uncle of the alleged victim. The applicant claimed a similar standing (maternal uncle) to a/0237/06, notwithstanding the fact that a/0238/06 and a.0237/06 do not appear to be related. The OPCD therefore queries the standing of the applicant.

a/0239/06

38. The application was subsequently supplemented by a student card of the alleged victim, which was signed by the alleged victim's guardian – the applicant – who is also the director of the school. The OPCD refers to its above submissions concerning the validity of such a document. The OPCD further notes that there is no documentation concerning the relationship between the applicant and the alleged victim, and further, that the alleged victim did not consent to the applicant acting on his behalf in the initial application. Concerning the references to [Redacted], the OPCD refers to its observations above.

a/0240/06

39. The applicant has subsequently submitted a student card, and at the same time, has changed his birth-date from [Redacted] to [Redacted] and has also alleged that the events occurred from March 2002 until August 2002, rather than from October 2002 onwards. The direct consequence of these changes is that the applicant would have been under the age of 15 at the time of the alleged events. The OPCD observes in this regard that the applicant stated in his initial application that he possessed an electoral card, but failed to adduce it either then or subsequently. In order to have possessed an electoral card, the applicant must have been at least 18 years, when the initial application was submitted (September 2006). If the applicant was 18 years old in 2006, he would have had to have been born at the very least, in 1987 and not [Redacted]. The OPCD respectfully submits that in light of these blatant inconsistencies, the application lacks intrinsic coherence.

3.3 Applications submitted on behalf of another, which were rejected due to lack of consent, or lack of identification[42]

3.3.1 Alleged victims, which have subsequently submitted a declaration that they wish to act in their own name

40. The alleged victims pertaining to applications a/0004/06, a/0005/06, a/0073/06, have subsequently submitted declarations – in French – that they wish to act in their own name. The OPCD notes that these alleged victims are either only conversant in Swahili,[43] or the application

[42] ICC-01/04-423-Corr at para 20.
[43] a/0004/06, a/0073/06,

fails to specify which languages they understand.[44] It is also not apparent as to whether the alleged victims were present when the initial applications were completed. Accordingly, in the absence of any information as to whether both the declaration, and the contents of the initial application have been read and approved by the alleged victim in a language he or she understands, the OPCD respectfully submits that the declaration cannot be considered by the Chamber as properly embodying the consent of the alleged victim to act on his or her own behalf.

3.3.2 Alleged victims, which have subsequently submitted an Attestation de Naissance in order to establish their identity

41. The OPCD observes that Attestations de Naissance are not considered to be a reliable method of establishing a person's birth-date or identity in the DRC,[45] and that this unreliability is exacerbated when such documents have been obtained for the purposes of litigation. The OPCD also notes that the Attestations submitted in connection with the respective applications have different formats: the Attestation submitted by a/0049/06 and a/0050/06 have a section in which the relevant authority is required to certify that supporting documents were adduced (this section was not, however, completed, and as such, the document is *prima facie* invalid). In contrast, the two Attestations submitted on behalf of a/0078/06 are simply typewritten statements, which have not been issued on an official template. This lack of uniformity suggests that the procedure for obtaining such documents is neither consistent nor rigorous.

a/0005/06

42. In terms of the details of the alleged events, the applicant refers to her village being attacked by [Redacted] in March 2003. However, the credibility of this allegation is contradicted by information suggesting that [Redacted] had in fact been imprisoned in [Redacted] and killed.[46]

a/0049/06

[44] a/0070/06, a/0110/06

[45] For example, the identification requirements established by the United States Embassy in Kinshasa stipulate the following: "Birth Documents – Acte de Naissance/Extrait d'Acte Naissance: The original acte de naissance or extrait d'acte de naissance for each applicant is required. Attestations de naissance are not accepted for individuals born in the Democratic Republic of Congo or Republic of Congo. Applicants without an acte de naissance or extrait d'acte naissance must obtain a jugement supplétif from the local court where you were born." http://kinshasa.usembassy.gov/uploads/images/la2keAIdmUNCtCs2vzSbAg/21-regular-immigrant-visa-english.pdf; Similarly, in considering an asylum application filed by a Congolese woman, the Swiss Federal Administrative Tribunal in Berne concluded « *« En l'espèce, la recourante n'a pas remis aux autorités ses documents de voyage ou ses pièces d'identité, au sens défini ci-dessus. Le seul document donnant des informations sur son identité prétendue, à savoir une attestation de naissance, ne saurait manifestement pas être considéré comme suffisant au sens de l'art. 32 al. 2 let. a LAsi (cf. aussi ce sujet le consid. 3.3 ci-avant). A cela s'ajoute qu'il ne s'agit pas d'un original, mais d'une copie.* », Judgement of 5 May 2008, §4.1, http://relevancy.bger.ch/pdf/azabvger/2008/e_02652_2008_2008_05_05_t.pdf.

[46][Redacted]

43. The OPCD notes that the alleged victim has not, to this date, submitted the missing information (consent by the alleged victim's next of kin/guardian that an application be submitted on her behalf), nor has she submitted a declaration stating clearly that she wishes to act on her behalf. In addition, no identification document has been submitted to establish the identity of the alleged victim. The OPCD further notes that there are significant inconsistencies within the initial application (for example, her alleged birth-date is not consistent with her description of herself as being 15 years old at the time of the events), and between the details provided in the initial application and the additional information (for example, as regards the length of enrollment, her treatment at the camp). Moreover, as regards the details of the allegations, it appears that her [Redacted] were present at the camp, which appears to be contrary to her description as being 'enrolled', as opposed to being present due to these connections. There is no information that her marriage was not consensual. Moreover, in light of the fact that she refers to having a child, it would seem probable that her marriage was independent of her two-week stay in the camp. The activities referred to by the alleged victim would also not meet the standard of cruel and inhumane treatment, particularly in light of the limited duration of her stay in the camp. Concerning the alleged death of her husband, the alleged victim does not appear to be in position to ascertain whether it occurred due to an ordinary crime (for example, internal in-fighting as alluded to by the alleged victim), or in the course of hostilities. In either case, it would not be considered to be an offence under the Rome Statute. The OPCD therefore respectfully submits that the application lacks intrinsic coherence.

a/0050/06

44. The OPCD notes that the alleged victim has not, to this date, submitted the missing information (the alleged victim's consent that the applicant participate on her behalf), nor has she submitted a declaration stating clearly that she wishes to act on her behalf. In addition, no identification document has been submitted to establish the identity of the alleged victim. In terms of the additional information, the alleged victim later asserts that she does not recognize the map included with the application, and attributes this to the fact that the initial interview was conducted in Swahili and French (whereas the application describes it as occurring in Lingala). The OPCD respectfully submits that in light of the above factors, the application should be dismissed due to lack of intrinsic coherence.

a/0073/06

45. The OPCD further observes that the initial application was not initialed on any of the pages. The OPCD therefore submits that the application remains incomplete, and lacks intrinsic coherence.

a/0076/06

46. As regards the electoral card which has been submitted in order to establish the identity of the alleged victim, the OPCD notes that in accordance with the birth-date ([Redacted]), the alleged victim would have been 15 years old at the time of the alleged events, and as such, was not a child soldier. As regards the other allegations, there is insufficient detail to ascertain whether the threshold for the alleged offences is met on a *prima facie* basis (for example, the applicant does not describe the acts which in her view, constituted cruel and inhumane treatment). The OPCD further observes that the initial application was not initialed on any of the pages. The OPCD therefore submits that the application remains incomplete.

a/0078/06

47. The alleged victim has subsequently submitted an attestation de naissance, a declaration from her father which changes certain details such as the birth-date of the alleged victim and the date of recruitment, a photograph of the alleged victim, a new application for participation, a different attestation de naissance, a power of attorney, a declaration that she wishes to act in her own name, and finally, an amendment concerning her legal representation. The OPCD firstly submits that in light of the multiple changes which have been made by different actors, it is not possible to reliably verify whether the final application submitted on behalf of the alleged victim properly represents her personal account of the alleged events, and that she has not been unduly influenced, for example, through the direct involvement of her father, who changed key aspects of her account, in a manner which ensures that she would be more likely to meet the qualifications to be recognized as a victim in a specific case.[47] The OPCD further notes that within the second application dated 25 January 2008, the applicant states that she had not previously submitted an application before the ICC. This suggests that either the applicant is unreliable, or that she was not adequately consulted in relation to the first application. The applicant's revocation of the power of attorney given to Mr. Walleyn and Mr. Mulenda also arguably revokes the validity of the second application. If the first application is to be the Chamber's reference point, the OPCD submits that in light of the fact that the alleged victim has requested to act on her own behalf, the additional information provided by her father should not be taken into consideration by the Chamber, since it was submitted when the alleged victim was no longer a minor, and she has subsequently expressed a preference to act in her own name. The initial application was also not initialed on any of the pages.

48. The OPCD further observes that the alleged victim has not adduced any photographic identification: the photograph of the alleged victim has not been witnessed by two persons, who

[47] The OPCD notes that the additional declaration which amended the date of the alleged victim's recruitment from August 2003 to August 2002 was submitted in September 2007 – that is, after the Pre-Trial Chamber issued its decision not to confirm the charges against Thomas Lubanga Dyilo for any alleged events after 13 August 2003: Decision on the confirmation of charges, 29 January 2007**,** ICC-01/04-01/06-803.

could credibly attest to her identity through prior acquaintance. In light of the multiple inconsistencies and the unreliability of the documentation, the OPCD respectfully submits that the application lacks intrinsic coherence.

a/0079/06

49. The alleged victim has subsequently submitted an electoral card. However, as regards the alleged events which occurred in 2006, the OPCD respectfully submits that there is insufficient information to verify whether the threshold elements of an offence under the Rome Statute have been met. Finally, the OPCD notes that the application form was not initialed on any of the pages.

a/0110/06

50. An electoral card and declaration concerning an intent to act in his own name was subsequently submitted by the alleged victim. The OPCD respectfully submits that the legal standing of the application is ambiguous: the initial application was submitted by an applicant who failed to specify their relationship to the alleged victim, and the alleged victim is described as being deceased. As regards the details of the alleged events, the OPCD respectfully submits that the alleged victim cannot claim moral harm on behalf of the death of his sister-in-law, as the relationship is insufficiently proximate.

4. Relief Sought

51. For the reasons set out above, the OPCD respectfully requests the Honourable Single Judge to decide that applications are either incomplete or do not meet the criteria under article 68(3) for participation in the proceedings.

Xavier-Jean Keïta
Principal Counsel of OPCD

Dated this Wednesday, 15th day of October 2008

At The Hague, The Netherlands.