

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 18 November 2008

PRE-TRIAL CHAMBER II

Before: Judge Mauro Politi, Presiding Judge
Judge Hans Peter Kaul
Judge Ekaterina Trendafilova

**SITUATION IN UGANDA
IN THE CASE OF
*THE PROSECUTOR v. JOSEPH KONY, VINCENT OTTI, OKOT ODHIAMBO
AND DOMINIC ONGWEN***

Public Document

**Observations on behalf of victims pursuant to article 19(1) of the Rome Statute
with 55 Public Annexes and 45 Redacted Annexes**

Source: Office of Public Counsel for Victims

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

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Unrepresented Victims

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a/120/06, a/0121/06, a/0123/06 and
a/0124/06

**Unrepresented Applicants for
Participation/Reparation**

a/0010/06, a/0064/06, a/0081/06, a/0082/06,
a/0084/06 to a/0087/06, a/0097/06,
a/0099/06, a/0100/06, a/0104/06, a/0111/06,
a/0113/06, a/0116/06, a/0127/06, a/0014/07
to a/0020/07, and a/0076/07 to a/0125/07

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States Representatives

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Uganda

Amicus Curiae

The Uganda Victims' Foundation
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**Victims Participation and Reparations
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Other

I. PROCEDURAL HISTORY

1. On 8 July 2005, Pre-Trial Chamber II, seized of the situation in Uganda, issued the warrant of arrest (amended on 27 September 2005) and the request for arrest and surrender of Joseph Kony¹. The same day, the Pre-Trial Chamber also issued the warrants of arrest and the requests for arrest and surrender of Vincent Otti², Okot Odhiambo³ and Dominic Ongwen.⁴

2. On 22 November 2006, Pre-Trial Chamber II designated *“judge Mauro Politi as single judge, responsible for all issues arising in connection with victims’ application for participation in the proceedings in the situation in Uganda and in the case against Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo and Dominic Ongwen”*.⁵

3. On 29 June 2007, the “Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord’s Resistance Army/Movement” (the “Juba Agreement”) was signed in Juba, Sudan.⁶

¹ See the “Warrant of Arrest for Joseph Kony issued on 8 July 2005 as amended on 27 September 2005”, 27 September 2005, No. ICC-02/04-01/05-53. See also the “Request for Arrest and Surrender of Joseph Kony issued on 8 July 2005 as amended on 27 September 2005”, 27 September 2005, No. ICC-02/04-01/05-29 (reclassified as public on 2nd February 2007 pursuant to Decision No. ICC-02/04-01/05-135).

² See the “Warrant of Arrest for Vincent Otti”, 8 July 2005, No. ICC-02/04-01/05-54. See also the “Request for Arrest and Surrender of Vincent Otti”, 8 July 2005, No. ICC-02/04-01/05-13 (reclassified as public on 2nd February 2007 pursuant to Decision No. ICC-02/04-01/05-135).

³ See the “Warrant of Arrest for Okot Odhiambo”, 8 July 2005, No. ICC-02/04-01/05-56. See also “Request for Arrest and Surrender of Okot Odhiambo, 8 July 2005, No. ICC-02/04-01/05-15 (reclassified as public on 2nd February 2007 pursuant to Decision No. ICC-02/04-01/05-135).

⁴ See the “Warrant of Arrest for Dominic Ongwen”, 8 July 2005, No. ICC-02/04-01/05-57. See also “Request for Arrest and Surrender of Dominic Ongwen”, 8 July 2005, No. ICC-02/04-01/05-16 (reclassified as public on 2nd February 2007 pursuant to Decision No. ICC-02/04-01/05-135).

⁵ See the “Decision designating a Single Judge on Victim’s issues”, 22 November 2006, No. ICC-02/04-01/05-130, p. 3. See also the “Decision Designating a Single Judge on Victim’s Issues for the Period of 6 September to 15 October 2007”, 3 September 2007, No. ICC-02/04-01/05-255.

⁶ The text of the Juba Agreement is available at the following address:

<http://www.ugandaconsulate-juba.org/AGREEMENT%20ON%20ACCOUNTABILITY%20AND%20RECONCILIATION.pdf>.

4. On 10 August 2007, the Single Judge rendered the “Decision on victims’ 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”, granting applicants a/0090/06, a/0098/06, a/0112/06, a/0118/06, a/0119/06 and a/0122/06 the status of victims in the case of *Prosecutor v. Kony et al.*⁷ In the said decision the Single Judge requested the Office of Public Counsel for Victims (the “OPCV” or the “Office”) to continue to provide support and assistance to victims and to applicants.

5. On 15 February 2008, the Single Judge rendered the “Decision on legal representation of Victims a/0090/06, a/0098/06, a/0101/06 a/0112/06, a/0118/06, a/0119/06 and a/0122/06” appointing, after consultation with the Office, the Principal Counsel of the OPCV as legal representative of victim a/0119/06, and a Counsel from the OPCV, as legal representative of victims a/0090/06, a/0098/06, a/0112/06, a/0118/06, a/0122/06 in the case of *The Prosecutor v. Kony et al.*⁸

6. On 19 February 2008, an “Annexure to the Agreement on Accountability and Reconciliation signed between the Government of the Republic of Uganda and the Lord’s Resistance Army/Movement” (the “Annexure”) was signed.⁹

7. On 29 February 2008, the Pre-Trial Chamber issued the “Request for Information from the Republic of Uganda on the status of execution of the Warrants of Arrest”.¹⁰

8. On 14 March 2008, the Single Judge issued the “Decision on victims’ application for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06,

⁷ See the “Decision on victims’ 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”, 10 August 2007, No. ICC-02/04-101.

⁸ See the “Decision on legal representation of Victims a/0090/06, a/0098/06, a/0101/06 a/0112/06, a/0118/06, a/0119/06 and a/0122/06”, 15 February 2008, No. ICC-02/04-01/05-267, p. 6.

⁹ The text of the Annexure is available at the following address:

http://www.iccnw.org/documents/Annexure_to_agreement_on_Accountability_signed_today.pdf.

¹⁰ See the “Request for Information from the Republic of Uganda on the Status of Execution of the Warrants of Arrest”, 29 February 2008, No. ICC-02-04-01-05-274.

a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06", granting applicants a/0094/06, a/0095/06, a/0103/06, a/0117/06, a/0120/06, a/0121/06, a/0123/06 and a/0124/06 the status of victims in the case of *The Prosecutor v. Joseph Kony et al.*¹¹ In the said decision the Single Judge requested the Office to continue to provide support and assistance to victims and to applicants.

9. On 28 March 2008, the Registry filed the "Report by the Registrar on the Execution of the Request for Information from the Republic of Uganda on the Status of Execution of the Warrants of Arrest"¹² which included the Response of the Acting Solicitor General of the Republic of Uganda¹³ (the "First Response").

10. On 18 June 2008, Pre-Trial Chamber II issued the "Request for further information from the Republic of Uganda on the status of execution of the Warrants of Arrest".¹⁴

11. On 10 July 2008, the Registry filed the "Report by the Registrar on the Status of Execution of the Warrants of Arrest"¹⁵ which included the Response of the Acting

¹¹ See the "Decision on victim's application for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0101/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06", 14 March 2008, No. ICC-02/04-125.

¹² See the "Report by the Registrar on the Execution of the "Request for Information from the Republic of Uganda on the Status of Execution of the Warrants of Arrest"", 28 March 2008, No ICC-02/04-01/05-286.

¹³ See the Annex 2 attached to the "Report by the Registrar on the Execution of the "Request for Information from the Republic of Uganda on the Status of Execution of the Warrants of Arrest"", 28 March 2008, No. ICC-02/04-01/05-286-Anx2.

¹⁴ See the "Request for Further Information from the Republic of Uganda on the Status of Execution of the Warrants of Arrest", 18 June 2008, No ICC-02/04-01/05-299.

¹⁵ See the "Report by the Registrar on the Execution of the "Request for Further Information from the Republic of Uganda on the Status of Execution of the Warrants of Arrest"", 10 July 2008, No ICC-02/04-01/05-305.

Solicitor General of the Republic of Uganda annexed to the Report¹⁶ (the "Second Response").

12. On 21 October 2008, the Pre-Trial Chamber issued the "Decision initiating proceedings under article 19, requesting observations and appointing Counsel for the Defence"¹⁷ (the "Decision"), inviting "*victims who have been admitted to participate in the case or their legal representatives*", as well as "*those applicants who have submitted applications to be admitted to participate with respect to the case or their legal representatives*", to submit observations on the admissibility of the case.¹⁸

13. On 4 November 2008, the OPCV submitted an "*Application [...] to extend the time limit for the submission of observations with regard to the admissibility proceedings*".¹⁹

14. On 11 November 2008, Pre-Trial Chamber II issued the "Decision on request by the Office of Public Counsel for Victims for extension of time limit in proceedings under article 19(1)"²⁰ rejecting the OPCV's application filed on 4 November 2008.

15. The reference in the Decision to regulations 80(1) and 80(2) of the Regulations of the Court²¹ seems to imply that the OPCV is mandated by the Chamber to submit observations on behalf of the two categories of victims identified in the Decision.²² The Office submits therefore these observations on behalf of victims authorised to participate in the case and for whom counsel of the OPCV have been appointed by

¹⁶ See the Annex 2 attached to the "Report by the Registrar on the Execution of the "Request for Further Information from the Republic of Uganda on the Status of Execution of the Warrants of Arrest"", 10 July 2008, No ICC-02/04-01/05-305-Anx2.

¹⁷ See the "Decision initiating proceedings under article 19, requesting observations and appointing counsel for the Defence", 21 October 2008, No ICC-02/04-01/05-320.

¹⁸ *Idem*, p. 7.

¹⁹ See the "Application of the OPCV to extend the time limit for the submission of observations with regards to the admissibility proceedings", 4 November 2008, No. ICC-02/04-01/05-332.

²⁰ See the Decision on request by the Office of Public Counsel for Victims for extension of time limit in proceedings under article 19(1)", 11 November 2008, No. ICC-02/04-01/05-343.

²¹ See the "Decision initiating proceedings under article 19, requesting observations and appointing counsel for the Defence", *supra* note 17, p. 5.

²² See *supra* note 18 and accompanying text.

the Single Judge in its decision dated 15 February 2008,²³ as well as on behalf of victims authorised to participate in the case who have not yet chosen a legal representative, and on behalf of applicants who have submitted applications for participation in the case since the Office has a duty to provide them with legal assistance pursuant to the decisions of the Single Judge dated 10 August 2007²⁴ and 14 March 2008.²⁵

16. The Office, which represents victims a/0090/06, a/0098/06, a/0112/06, a/0118/06, a/0119/06 and a/0122/06, and which provides legal assistance to applicant victims a/0010/06, a/0064/06, a/0081/06, a/0082/06, a/0084/06 to a/0087/06, a/0094/06, a/0095/06, a/0097/06, a/0099/06, a/0100/06, a/0103/06, a/0104/06, a/0111/06, a/0113/06, a/0116/06, a/0117/06, a/120/06, a/0121/06, a/0123/06 and a/0124/06, a/0127/06, a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07, respectfully submits the following observations pursuant to article 19(3) of the Rome Statute.

17. The Office will limit its observations to “*formal justice processes*”,²⁶ as opposed to the traditional justice system, since these processes are the ones to possibly give rise to issues linked to the admissibility of a case in accordance with the Juba Agreement.²⁷ Indeed, the cases covered by the traditional justice system will fall short of the threshold of sufficient gravity as put forward by article 17(1)(d) of the Rome Statute and would be therefore *de facto* inadmissible before the Court.

²³ See the “Decision on legal representation of Victims a/0090/06, a/0098/06, a/0101/06 a/0112/06, a/0118/06, a/0119/06 and a/0122/06”, *supra* note 8.

²⁴ See the “Decision on victims’ 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”, *supra* note 7.

²⁵ See the “Decision on victim’s application for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0101/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06”, *supra* note 11.

²⁶ See the Juba Agreement, *supra* note 6, articles 6.1 and 6.2.

²⁷ *Idem*.

II. OBSERVATIONS RELATED TO ARTICLE 19(1) OF THE ROME STATUTE

18. As noted by Pre-Trial Chamber II in its Decision, "*pursuant to article 19(1) of the Statute, the Court may, on its own motion, determine the admissibility of a case in accordance with article 17*".²⁸ The obligation for the Court to satisfy itself that it has jurisdiction over the case is directly linked to two important principles established in the Rome Statute, namely that the Court is governed by the principle of complementarity²⁹ and that the Court is the sole arbiter of its own jurisdiction.³⁰

19. The triggering of this possibility opened to the Chamber on its own motion pursuant to article 19(1) of the Rome Statute cannot but reinforce the interests of Justice. However, in the present instance, the Office submits that some uncertainties are arising as to the timing of the proceedings at hand.

20. Indeed, pursuant to article 17(1) of the Rome Statute, "*the Court shall determine that a case is inadmissible where the case is being investigated or prosecuted by a State which has jurisdiction over it*"³¹ or "*where the case has been investigated by a State which has jurisdiction over it [...]*".³² Therefore, in order for the admissibility proceedings to be triggered, the competent jurisdictions of the State concerned being primarily responsible for trying the case, since it benefits from the principle of primacy of its national jurisdictions, need to exercise their jurisdictions contemporarily with the exercising of its jurisdiction by the Court itself. The Office therefore contends it is

²⁸ See the "Decision initiating proceedings under article 19, requesting observations and appointing counsel for the Defence", *supra* note 17, p. 5. See also the "Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled 'Decision on the Prosecutor's Application for Warrants of Arrest, Article 58'" (Appeals Chamber), 13 July 2006, No. ICC-01/04-169, par. 52: "[t]he Appeals Chamber accepts that the Pre-Trial Chamber may on its own motion address admissibility".

²⁹ See paragraph 10 of the Preamble of the Rome Statute and the first article of the same text.

³⁰ See ICTY, *The Prosecutor v. Dusko Tadić a/k/a "Dule"*, "Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction" (Appeals Chamber), Case No. IT-94-1-AR-72, 2 October 1995, paras. 14-22.

³¹ We underline.

³² We underline.

only if this criteria is met that the second one, namely whether “*the State is unwilling or unable genuinely to carry out the investigation or prosecution*”³³, can be analysed.³⁴

21. In the present case, article 4.1 of the Juba Agreement provides that “[f]ormal criminal and civil justice measures shall be applied to any individual who is alleged to have committed serious crimes or human rights violations in the conflict”.³⁵ Furthermore, as stated by the Solicitor General of the Republic of Uganda in her First Response, “[t]he Annexure provides an implementation mechanism in respect of [article 4.1 of the Juba Agreement]” since “[p]aragraph 7 [of the Annexure] provides that a special division of the High Court of Uganda shall be established to try individuals who are alleged to have committed serious crimes during the conflict”.³⁶

22. Accordingly, any concern as to the admissibility of the case of *The Prosecutor v. Joseph Kony and al.* would, as a consequence, entail that the Special division of the High Court is *de facto* exercising its jurisdiction over the individuals sought by the Court or that it is unwilling or unable genuinely to do so pursuant to article 17 of the Rome Statute. But, at this stage and as already stated, these considerations do not apply since the Lord’s Resistance Army/Movement (“LRA/M”) has not signed the Peace Agreement.³⁷

23. Indeed, in the present case, the Ugandan authorities recognised themselves that “[t]he establishment of the special division of the High Court and the enactment of the relevant legislation shall take place after the signing of the final peace agreement,”³⁸ specifying that “*the Government of Uganda is yet to take any steps toward the*

³³ See article 17(1)(a) and (b) of the Rome Statute.

³⁴ In this sense, see OLÁSOLO (H.), *The Triggering Procedure of the International Criminal Court*, Martinus Nijhoff Publishers, 2005, p. 165.

³⁵ See the Juba Agreement, *supra* note 6.

³⁶ See the Annex 2 attached to the “Report by the Registrar on the Execution of the “Request for Information from the Republic of Uganda on the Status of Execution of the Warrants of Arrest”, *supra* note 13, p. 2.

³⁷ In this sense, see *infra* note 41 and the accompanying text.

³⁸ *Idem*.

implementation of the Agreement or the Annexure".³⁹ However, in her Second Response, the Solicitor General of the Republic of Uganda acknowledged that "[i]t is true that Joseph KONY, the leader of the LRA was on 10th April 2008 expected to sign the comprehensive peace agreement between his organization and the Government of Uganda at Ri-Kwangba. He did not turn up for the purpose and therefore, the agreement was never signed".⁴⁰

24. In her recent Statement made on behalf of the Republic of Uganda at the Seventh Session of the Assembly of States Parties to the Rome Statute on 15 November 2008, Ambassador Mirjam Blaak stated that "The [Government of Uganda] has now offered the LRA/LRM until 30 November 2008 to sign the already concluded final peace agreement".⁴¹ She further stated that "In the unlikely event that Kony signs the agreement and submits himself to the jurisdiction of Uganda, a new situation may arise which would require further discussions with the ICC".⁴² Such statement is a clear further acknowledgment by the Government of Uganda that at this point in time there is no prospective of proceedings in Uganda, all the more that Ambassador Mirjam Blaak herself qualifies the possibility for a signature of the Peace Agreement by the LRA/M, at this stage, as "purely hypothetical".⁴³

25. Moreover, although "[p]aragraph 9 [of the Annexure] envisages the enactment of a legislation providing for the law applicable [and] rules of procedure,"⁴⁴ the legal framework is yet to be set up. Accordingly, in the absence of any additional information regarding the establishment of the Special division of the High Court

³⁹ *Ibid*

⁴⁰ See the Annex 2 attached to the "Report by the Registrar on the Execution of the "Request for Further Information from the Republic of Uganda on the Status of Execution of the Warrants of Arrest"", *supra* note 16, p. 3.

⁴¹ See the Statement made on behalf of the Republic of Uganda by Ambassador Mirjam Blaak at the Seventh Session of the Assembly of States Parties to the Rome Statute, 15 November 2008, p. 3.

⁴² *Idem*.

⁴³ *Ibid*

⁴⁴ See the Annex 2 attached to the "Report by the Registrar on the Execution of the "Request for Information from the Republic of Uganda on the Status of Execution of the Warrants of Arrest"", *supra* note 13, p. 2.

and on the enactment of the texts providing for the competence of this latter, the Office submits that the trigger of the procedure under article 19 of the Rome Statute is premature at this stage of the proceedings.

26. As a consequence, the Office contends that pending the effective establishment of the Special division and the start of its investigations, it is not in a position to assess whether the prosecution of these individuals will preclude the International Criminal Court from exercising its own jurisdiction over Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen.

27. Furthermore, as stated by the Solicitor General of the Republic of Uganda “[t]he special division of the High Court is not meant to supplant the work of the International Criminal Court”.⁴⁵ Accordingly, if the investigations led by the Special division of the High Court give rise to the prosecution of Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen for crimes of a lesser gravity degree or not covering all the charges covered by the warrants of arrest issued by Pre-Trial Chamber II,⁴⁶ the Court will still be in a position to prosecute the said individuals for the remaining crimes without triggering the applicability of article 20 of the Rome Statute.

28. Moreover, as it stands and pending the signature of the Peace Agreement by the representatives of the LRA/M, the enactment of the texts regulating the competence and the procedure to be applied by the Special division of the High Court has not taken place. Therefore, the Office is of the opinion that pending the adoption of the legislation concerned, no determination can be made regarding an alleged unwillingness of the Ugandan Authorities to investigate or prosecute the crimes allegedly committed by Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen. Indeed, in the absence of the regulatory texts of the establishing

⁴⁵ *Ibid*

⁴⁶ See *supra* notes 1 to 4.

Special Division, no study with regard to the criteria put forward in article 17(2) of the Rome Statute can be made. Besides, the Office argues that nothing can be said with regard to the consistency of the texts regulating the jurisdiction of the Special division of the High Court with the Rome Statute.

29. However, as it stands, the text of the Juba Agreement, as completed by the Annexure, still lacks some principal characteristics which will need to be included in the implementation legislation in order to enable the Special division of the High Court to carry out its tasks.⁴⁷ Indeed, the Annexure specifies that “[p]rosecutions shall focus on individuals alleged to have planned or carried out widespread, systematic, or serious attacks directed against civilians or who are alleged to have committed grave breaches of the Geneva Conventions”.⁴⁸ Nevertheless, to date, the Ugandan legislation does not criminalise either war crimes or crimes against humanity, nor does it include specific texts on criminal responsibility for these crimes. Moreover, the texts make no reference to the scheme of penalties applicable in the event of conviction, other than some general references in articles 6.3 and 6.4 of the Juba Agreement.⁴⁹

30. These existing lacunas led the Human Rights organisations involved in the Ugandan peace talks to emphasise that “national trials in Uganda would not represent an alternative to the ICC unless certain benchmarks were reached, including fulfilment of the conditions that the trials were credible, impartial and independent, applied appropriate penalties and were consistent with international fair trial standards”.⁵⁰

⁴⁷ In this sense, see HUMAN RIGHTS WATCH, *Analysis of the Annex to the June 29 Agreement on Accountability and reconciliation* Human Rights Watch’s Fourth Memorandum on Justice Issues and the Juba Talks, February 2008, p. 3.

⁴⁸ See the Annexure, *supra* note 9, par. 14.

⁴⁹ See the Juba Agreement, *supra* note 6.

⁵⁰ See COALITION TO STOP THE USE OF CHILD SOLDIERS, *Child Soldiers Global Report 2008 - Uganda*, 20 May 2008, available at: <http://www.unhcr.org/refworld/docid/486cb13ac.html>.

III. VIEWS OF VICTIMS IN RESPECT OF THE PROCEEDINGS

31. The Juba Agreement provides that “[t]he Government shall promote the effective and meaningful participation of victims in accountability and reconciliation proceedings”.⁵¹ But except for the specific mention according to which “[v]ictims shall be informed of the processes and any decisions affecting their interests”⁵² and that they “have the right to access to relevant information about their experiences and to remember and commemorate past events affecting them,”⁵³ nothing is said in the Agreement on concrete manifestation of their participation in the proceedings before the Special division of the High Court. Moreover, the Annexure is completely silent with regard to the modalities governing victims’ participation in the proceedings before the Special division of the High Court.

32. Furthermore, considering that the Ugandan legal framework derives from the common law system where victims’ participation is not recognised as such, the victims authorised to participate in the case, as well as the applicant victims whose status’ determination is currently pending before Pre-Trial Chamber II, are of the view that the exercising of its jurisdiction by the Special division of the High Court would deprive them of their rights as granted in the Rome Statute, unless the Ugandan Authorities carefully implement the said rights with regard to the establishment of the Special division of the High Court, for the participation of victims to be meaningful.⁵⁴

⁵¹ See the Juba Agreement, *supra* note 6, article 8.2.

⁵² *Idem*.

⁵³ *Ibid.*, article 8.3.

⁵⁴ See GREATER NORTH WOMEN’S VOICES FOR PEACE NETWORK, UGANDAN WOMEN’S COALITION FOR PEACE & WOMEN’S INITIATIVES FOR GENDER JUSTICE, *Position Paper Views of women from North and North Eastern Uganda on the Peace talks mechanisms for Accountability and Reconciliation*, August 2007, pp. 1-2. See also, HUMAN RIGHTS WATCH, *Particular Challenges for Uganda in Conducting National Trials for Serious Crimes Human Rights Watch’s Third Memorandum on Justice Issues and the Juba Talks*: September 2007. Finally, see AMNESTY INTERNATIONAL, *Uganda Doubly Traumatized: lack of access to justice for female victims of sexual and gender-based violence in northern Uganda*, 30 November 2007, AFR 59/005/2007.

33. Victims of the atrocities committed in Uganda have a right to truth and to Justice, whether before the Special Division of the High Court or before the International Criminal Court. Indeed, since the Juba Agreement provides that “[t]he Government shall promote the effective and meaningful participation of victims in accountability and reconciliation proceedings”,⁵⁵ the victims believe that clear modalities shall be established to make these rights effective as well as adequate protective measures without which the victims’ participation will not be possible.

34. As put forward by the Single Judge in the case *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* in her “Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case,”⁵⁶ “when [the victim’s right to truth] is to be satisfied through criminal proceedings, victims have a central interest in that the outcome of such proceedings (i) bring clarity about what indeed happened; and (ii) close possible gaps between the factual findings resulting from the criminal proceedings and the actual truth”.⁵⁷

35. Moreover, the victims’ rights to Justice, namely to “have those who victimised them prosecuted, tried and convicted, and subject to a certain punishment,”⁵⁸ is to be differentiated from the victims’ right to reparations which is established in the Juba Agreement⁵⁹ and in the Annexure⁶⁰.

36. Victims of the atrocities in Uganda support the role of the International Criminal Court in addressing the most serious crimes for the following reasons: “[t]he ICC provides an opportunity for victims to participate in proceedings; It is a form of ‘truth-telling’; There are better provisions for the rights of the accused and role of Defence

⁵⁵ See the Juba Agreement, *supra* note 6, article 8.2.

⁵⁶ See the “Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case” (Pre-Trial Chamber I, Single Judge), 15 May 2008, No. ICC-01/04-01/07-474.

⁵⁷ *Idem*, par. 34.

⁵⁸ *Ibid*, par. 37.

⁵⁹ See the Juba Agreement, *supra* note 6, articles 6.4 and 9.1 to 9.3.

⁶⁰ See the Annexure, *supra* note 9, paras. 16 to 18.

*Counsel under the Rome Statute of the ICC than currently available under domestic law in Uganda; There is a more rigorous and transparent process of justice under international law than within Ugandan; and Sentencing under the ICC does not include the death penalty”.*⁶¹

37. Regarding the specific views of victims represented and/or assisted by the OPCV, the Office cooperated with the Victims’ Participation and Reparation Section (the “VPRS”) in order to inform them regarding the proceedings triggered by Pre-Trial Chamber II and to gather their views. As explained by the Registry in its report dated 7 November 2008⁶² and noted by the Pre-Trial Chamber in its “Decision on request by the Office of Public Counsel for Victims for extension of time limit in proceedings under article 19(1)”⁶³, the information has been provided directly to most victims having communicated with the Court in respect of the case with the assistance of relevant intermediary organisations. On 2nd November 2008, the VPRS organised a collective meeting with the intermediaries in Uganda during which the Principal Counsel of the Office explained the proceedings and what was expected from victims. To this end, a questionnaire prepared by the Office was distributed to all the intermediaries to be able to gather the views of victims in the most efficient and fast way.

38. The OPCV received 237 completed questionnaires from 7 to 16 November 2008⁶⁴ and hereby provides a summary of the main views and concerns from the victims concerned. The questionnaires are attached as Annexes to the present submissions, amongst which 45 are provided in redacted form. The Office indeed argues that in compliance with the decisions by the Single Judge dated 1st February

⁶¹ See GREATER NORTH WOMEN’S VOICES FOR PEACE NETWORK, UGANDAN WOMEN’S COALITION FOR PEACE & WOMEN’S INITIATIVES FOR GENDER JUSTICE, *supra* note 54, p. 2.

⁶² See the “Report on implementation of Decision initiating proceedings under article 19, requesting observations and appointing counsel for the Defence”, 7 November 2008, No. ICC-02/04-01/05-334-Conf-Exp.

⁶³ See the “Decision on request by the Office of Public Counsel for Victims for extension of time limit in proceedings under article 19(1)”, *supra* note 20, pp. 4 and 5.

⁶⁴ See annexes 1-100 appended to this submission.

2007⁶⁵ and 17 September 2008,⁶⁶ which ordered the transmission to the Prosecution and to the Defence of redacted applications for the purpose of rule 89(1) of the Rules of Procedure and Evidence, it is necessary to provide the same participants with copies of the questionnaires expurgated of any details which may lead to the identification of the victims concerned. Furthermore, the Office considers that the security situation in Uganda and the fact that the victims live in areas of ongoing or potential conflict also justifies the provision of redacted copies to the Government of Uganda, as well as to the organisations acting as *amicus curiae* and to the public. The unredacted version of the Annexes is provided to Pre-Trial Chamber II separately.

39. As a general remark, the victims who responded to the questionnaire are not aware of the possibility to establish a Special division of the High Court but they are adamant that the people who committed the atrocities they suffered from are brought to face trial before the International Criminal Court, hoping that a fair trial will put an end to the conflict in Northern Uganda. After explanations on this possibility as well as on the proceedings triggered by Pre-Trial Chamber II, the victims voiced several concerns as to the establishment of and the possibility for Kony *et al.* to be tried before the Special division of the High Court. Moreover, they all favour an international trial since, according to them, it is the only way for the world to know what happened to them, as well as to ensure impartiality of the proceedings.

⁶⁵ 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", 1st February 2007, No. ICC-02/04-01/05-134, p. 19.

⁶⁶ See the "Decision on legal representation, appointment of counsel for the defence, criteria for redactions of applications for participation, and submission of observations on applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07", 17 September 2008, No. ICC-02/04-01/05-312, p. 6.

1. SPECIFIC VIEWS OF VICTIMS a/0090/06,⁶⁷ a/0098/06,⁶⁸ a/0112/06,⁶⁹ a/0118/06,⁷⁰ a/0119/06⁷¹ AND a/0122/06⁷²

40. Victims a/0090/06, a/0098/06, a/0112/06, a/0118/06, a/0119/06 and a/0122/06 have been admitted to participate in the *Kony et al.* case pursuant to the "Decision on victims' 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"⁷³ and are represented by the Principal Counsel and a counsel from the Office pursuant to the "Decision on legal representation of Victims a/0090/06, a/0098/06, a/0101/06 a/0112/06, a/0118/06, a/0119/06 and a/0122/06".⁷⁴

41. Victim a/0090/06 is of the view that it would not be reasonable to transfer the applications for participation back to a court he/she knows nothing about. Along the same lines, victim a/0098/06 argues that since the victims have not been consulted by the Government in order for the Special division of the High Court to address their needs, the victims cannot support such an establishment and consider that the ICC shall carry on its job. Victims a/0117/06 and a/0123/06 are of the opinion that if the case against Kony *et al.* is to be tried before the Special division of the High Court, the perpetrators will never be tried since the peace talks lead to no tangible result and there is no prospects of improvement. According to victim a/0090/06, the supposed establishment of the Special division of the High Court and accountability in Uganda is only meant to persuade Kony to sign the Peace Agreement but is not intended to give rise to real trials.

⁶⁷ See Annex 1.

⁶⁸ See Annex 2.

⁶⁹ See Annex 3.

⁷⁰ See Annex 4.

⁷¹ See Annex 5.

⁷² See Annex 6.

⁷³ See the "Decision on victims' 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", *supra* note 7.

⁷⁴ See the "Decision on legal representation of Victims a/0090/06, a/0098/06, a/0101/06 a/0112/06, a/0118/06, a/0119/06 and a/0122/06", *supra* note 8.

42. Moreover, victims a/0098/06, a/0112/06, a/0118/06, a/0119/06, a/0122/06 and a/0123/06 have doubts as to the impartiality of the Special division of the High Court and believe that the ICC is the only court able to try the main perpetrators because it does not have any political influence or interests in Uganda. Similarly, victim a/0117/06 puts forwards that the ICC cannot be influenced or pressurised by anybody, whereas victim a/0123/06 is of the opinion that the Ugandan criminal procedure will be easily manipulated and corrupted.

43. Victims a/0090/06, a/0112/06 and a/0119/06 also argue that the case shall not be tried in Uganda because it entails too many crimes and atrocities and the national jurisdiction is not equipped to deal with them. Victim a/0117/06 also argues that if Kony *et al.* are tried in Uganda they might be able to escape and start committing similar crimes whereas if they are tried before the ICC they will not be able to escape and start fighting again. Furthermore, victims a/0090/06, a/0122/06 and a/0123/06 argue that the Ugandan authorities cannot provide for the security of victims who will participate in the proceedings.

44. Furthermore, despite the fact that the right to reparations is established in the Juba Agreement and in the Annexure, victims a/0090/06, a/0119/06 and a/0122/06, are of the opinion that if the case is tried in Uganda, the victims will not get any kind of reparations. Victim a/0119/06 also points out that the criminal procedures in Uganda require a lot of money to make it successful and hence does not favour poor victims like the ones having suffered from the atrocities. Similarly, victims a/0090/06, a/0112/06 and a/0117/06 doubt that they will have a legal representative before the national jurisdiction and as a consequence will not be able to present their views before the judges.

2. SPECIFIC VIEWS OF UNREPRESENTED VICTIMS a/0094/06,⁷⁵ a/0095/06,⁷⁶ a/0103/06,⁷⁷ a/0117/06,⁷⁸ a/120/06,⁷⁹ a/0121/06,⁸⁰ a/0123/06⁸¹ AND a/0124/06⁸²

45. Victims a/0094/06, a/0095/06, a/0103/06, a/0117/06, a/120/06, a/0121/06, a/0123/06 and a/0124/06 have been admitted to participate in the *Kony et al.* Case pursuant to the “Decision on victims’ application for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06”⁸³ and are currently assisted by the OPCV pursuant to the same decision.

46. Victims a/0094/06, a/0103/06 and a/0124/06 are of the view that the Ugandan authorities had the opportunity to investigate the crimes committed by Kony *et al.* but doubt that they are able or even willing to proceed. Similarly victims a/0094/06 and a/0121/06 question the capacity of the Ugandan authorities to handle the issue at stake. Moreover, victim a/0120/06 is of the opinion that such a trial would be impossible for a Ugandan court to handle given the fact that it will draw so many sympathisers and, as a consequence, it will not allow proper justice to be administered. Victims a/0094/06, a/0095/06, a/0103/06, a/0120/06, a/0121/06 and a/0124/06 also doubt of the impartiality of any proceedings before a Ugandan court since the authorities, having the opportunity to stop the war, never obliged and the same is true, according to them, in relation to the prosecution of Kony *et al.* Victim a/0103/06 also points out that the Government of Uganda cannot establish an

⁷⁵ See Annex 7.

⁷⁶ See Annex 8.

⁷⁷ See Annex 9.

⁷⁸ See Annex 10.

⁷⁹ See Annex 11.

⁸⁰ See Annex 12.

⁸¹ See Annex 13.

⁸² See Annex 14.

⁸³ See the “Decision on victims’ application for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06”, *supra* note 11.

impartial court since he/she believes it has an interest in the war; as a result, if the case against Kony *et al.* is to be tried before a national court, it will never take place.

47. Furthermore, victims a/0094/06, a/0095/06 and a/0120/06 doubt that a Ugandan court will take into account the victims' views. Victims a/0094/06, a/0095/06 and a/0103/06 believe that protection issues will arise if the trial is to be held in Uganda. Moreover, victims a/0094/06, a/0095/06, a/0103/06 and a/0121/06 are of the opinion that since the Government failed to protect the people living in the North against Kony, it will not be able to protect them if the trial is held in Uganda.

48. Victim a/0120/06 deems it essential that if the trial is held in Uganda, psychological support is provided during the proceedings in order to avoid re-victimisation. Victims a/0094/06, a/0095/06, a/0103/06, a/0120/06, a/0121/06 and a/0124/06 also point out that reparations should be effective before a national court. As far as reparations are concerned, victims a/0094/06 and a/0124/06 do not think they will be implemented before a national Court.

3. VIEWS OF UNREPRESENTED APPLICANTS a/0010/06,⁸⁴ a/0064/06,⁸⁵ a/0081/06,⁸⁶ a/0082/06,⁸⁷ a/0084/06 TO a/0087/06,⁸⁸ a/0097/06,⁸⁹ a/0099/06,⁹⁰ a/0100/06,⁹¹ a/0111/06,⁹² a/0113/06,⁹³ a/0127/06,⁹⁴ a/0014/07 TO a/0019/07,⁹⁵ a/0076/07,⁹⁶ a/0077/07,⁹⁷ a/0080/07 TO a/0082/07,⁹⁸ a/0084/07,⁹⁹ a/0086/07,¹⁰⁰

⁸⁴ See Annex 15.

⁸⁵ See Annex 16.

⁸⁶ See Annex 17.

⁸⁷ See Annex 18.

⁸⁸ See annexes 19-22.

⁸⁹ See Annex 23.

⁹⁰ See Annex 24.

⁹¹ See Annex 25.

⁹² See Annex 26.

⁹³ See Annex 27.

⁹⁴ See Annex 28.

⁹⁵ See annexes 29-34.

⁹⁶ See Annex 35.

⁹⁷ See Annex 36.

⁹⁸ See Annexes 37-39.

⁹⁹ See Annex 40.

¹⁰⁰ See Annex 41.

a/0087/07,¹⁰¹ a/0089/07,¹⁰² a/0091/07,¹⁰³ a/0092/07,¹⁰⁴ a/0098/07,¹⁰⁵ a/0100/07 TO a/0108/07,¹⁰⁶ a/0112/07,¹⁰⁷ a/0115/07,¹⁰⁸ a/0117/07,¹⁰⁹ a/0118/07,¹¹⁰ a/0120/07,¹¹¹ a/0122/07,¹¹² a/0123/07¹¹³ AND a/0125/07¹¹⁴ AND OTHER VICTIMS HAVING COMMUNICATED WITH THE COURT IN RESPECT OF THE CASE¹¹⁵

49. Applicants a/0010/06, a/0064/06, a/0081/06, a/0082/06, a/0084/06 to a/0087/06, a/0097/06, a/0099/06, a/0100/06, a/0104/06, a/0111/06, a/0113/06, a/0127/06, a/0014/07 to a/0019/07, a/0076/07, a/0077/07, a/0080/07 to a/0082/07, a/0084/07, a/0086/07, a/0087/07, a/0089/07, a/0091/07, a/0092/07, a/0098/07, a/0100/07, a/0101/07, a/0103/07 to a/0108/07, a/0112/07, a/0115/07, a/0117/07, a/0118/07, a/0120/07, a/0122/07, a/0123/07 and a/0125/07 have submitted applications for participation in the case. The Office has a duty to provide them with legal assistance pursuant to the decisions of the Single Judge dated 10 August 2007¹¹⁶ and 14 March 2008.¹¹⁷

50. Other victims having communicated with the Court in respect of the Case provided their observations to the Office via the VPRS. Although the Office does not represent them, in light of the arguments put forward in paragraph 15 of the present submission, it deems appropriate to provide the Chamber with their observations. Accordingly, the Office thereafter also provides a summary of the observations of

¹⁰¹ See Annex 42.

¹⁰² See Annex 43.

¹⁰³ See Annex 44.

¹⁰⁴ See Annex 45.

¹⁰⁵ See Annex 46.

¹⁰⁶ See Annexes 47-54. See also Annex 17.

¹⁰⁷ See Annex 55.

¹⁰⁸ See Annex 56.

¹⁰⁹ See Annex 57.

¹¹⁰ See Annex 58.

¹¹¹ See Annex 59.

¹¹² See Annex 60.

¹¹³ See Annex 61.

¹¹⁴ See Annex 62.

¹¹⁵ See Annexes 63-100.

¹¹⁶ See the "Decision on victims' 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", *supra* note 7.

¹¹⁷ See the "Decision on victim's application for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0101/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06", *supra* note 11.

victims a/0065/06,¹¹⁸ a/0088/06,¹¹⁹ a/0091/06,¹²⁰ a/0092/06,¹²¹ a/0093/06,¹²² a/0096/06,¹²³ a/0101/06,¹²⁴ a/0109/06,¹²⁵ a/0110/06¹²⁶ and a/0114/06,¹²⁷ as well as the views of a victim met in Lira District¹²⁸ and another one met in Pader District.¹²⁹

51. Victims a/0010/06, a/0064/06, a/0084/06, a/0085/06, a/0113/06, a/0015/07, a/0076/07, a/0077/07, a/0080/07, a/0087/07, a/0089/07, a/0091/07, a/0092/07, a/0104/07, a/0105/07, a/0106/07, a/0112/07, a/0117/07, a/0118/07, a/0120/07, a/0122/07, a/0088/06, a/0091/06, a/0092/06, a/0101/06, a/0109/06 and a/0110/06 do not believe that a criminal procedure will meet their needs since the Government never came up with remedy to date despite the elapse of time since the occurrence of the events and did not gather their views. Victim a/0010/06, a/0097/06, a/0084/07, a/0112/07, a/0065/06, a/0088/06, a/0101/06, a/0109/06 and a/0110/06 add that victims have never been the concern of the State until now. Accordingly, some believe that if the trial has to take place in Uganda, it will never happen. Furthermore, victims a/0010/06, a/0097/06, a/0014/07, a/0017/07, a/0084/07 and a/0098/07 have doubts concerning the willingness of the State to set up a national jurisdiction to proceed with the case. Moreover, victims a/0010/06, a/0081/06, a/0082/06, a/0085/06, a/0086/06, a/0087/06, a/0100/06, a/0111/06, a/0015/07, a/0016/07, a/0017/07, a/0019/07, a/0077/07, a/0080/07, a/0081/07, a/0082/07, a/0087/07, a/0091/07, a/0092/07, a/0101/07, a/0102/07, a/0104/07, a/0107/07, a/0108/07, a/0112/07, a/0117/07, a/0120/07, a/0123/07, a/0125/07, a/0065/06, a/0088/06, a/0093/06, a/0096/06, a/0109/06, a/0110/06, the victim met in Lira District and the victim met in Pader District believe that the corruption prevailing in Uganda will jeopardise the process leading to partial decisions, and will not address the need of

¹¹⁸ See Annex 63.

¹¹⁹ See Annex 64.

¹²⁰ See Annex 65.

¹²¹ See Annex 66.

¹²² See Annex 67.

¹²³ See Annex 68.

¹²⁴ See Annex 69.

¹²⁵ See Annex 70.

¹²⁶ See Annex 71.

¹²⁷ See Annex 72.

¹²⁸ See Annex 73.

¹²⁹ See Annex 74.

poor victims. Most of these victims believe that if the trial is held in Uganda, the impartiality of the proceedings will not be respected as far as states actors are concerned.

52. Furthermore, victims a/0064/06, a/0084/06, a/0085/06, a/0097/06, a/0113/06, a/0127/06, a/0015/07, a/0019/07, a/0080/07, a/0082/07, a/0086/07, a/0087/07, a/0089/07, a/0098/07, a/0115/07, a/0118/07, a/0120/07, a/0125/07, a/0093/06, a/0096/06, a/0110/06 and the victim met in Lira District, believe that a national court does not have the capacity to handle the case at hand as shown by the referral of the situation in Northern Uganda by the Ugandan authorities.

53. Moreover, victims a/0010/06, a/0064/06, a/0081/06, a/0084/06, a/0097/06, a/0111/06, a/0127/06, a/0077/07, a/0080/07, a/0081/07, a/0082/07, a/0084/07, a/0087/07, a/0089/07, a/0091/07, a/0098/07, a/0100/07, a/0101/07, a/0102/07, a/0103/07, a/0104/07, a/0105/07, a/0106/07, a/0107/07, a/0108/07, a/0112/07, a/0115/07, a/0117/07, a/0118/07, a/0120/07, a/0122/07, a/0123/07, a/0088/06, a/0092/06, a/0101/06, a/0109/06, a/0110/06, a/0114/06 and the victim met in Pader District are of the view that the Ugandan authorities will not be able to provide for adequate security measures in case the trial against Kony *et al.* is held in Uganda. Similarly, victims a/0064/06, a/0099/06, a/0100/06, a/0113/06, a/0014/07, a/0017/07, a/0017/07, a/0019/07, a/0081/07, a/0082/07, a/0084/07, a/0086/07, a/0087/07, a/0100/07, a/0103/07, a/0105/07, a/0106/07, a/0112/07, a/0115/07, a/0122/07, a/0125/07, a/0088/06, a/0091/06, a/0092/06, a/0093/06, a/0101/06, a/0109/06 and a/0114/06 do not think that a national jurisdiction will cater for effective participation of victims.

54. Victims a/0010/06, a/0064/06, a/0081/06, a/0082/06, a/0084/06, a/0087/06, a/0097/06, a/0100/06, a/0111/06, a/0113/06, a/0127/06, a/0014/07, a/0015/07, a/0016/07, a/0017/07, a/0018/07, a/0017/07, a/0076/07, a/0077/07, a/0080/07, a/0081/07, a/0082/07, a/0084/07, a/0086/07, a/0089/07, a/0091/07, a/0092/07, a/0098/07, a/0100/07, a/0101/07, a/0102/07, a/0103/07, a/0104/07, a/0105/07, a/0107/07, a/0108/07, a/0112/07, a/0115/07,

a/0117/07, a/0118/07, a/0120/07, a/0122/07, a/0123/07, a/0125/07, a/0088/06, a/0091/06, a/0092/06, a/0093/06, a/0096/06, a/0101/06, a/0110/06, a/0114/06 and the victim met in Pader District deem it essential that the jurisdiction involved provides for effective reparations. However, as it stands, victims a/0010/06, a/0064/06, a/0084/06, a/0097/06, a/0113/06, a/0076/07, a/0077/07, a/0084/07, a/0105/07, a/0106/07, a/0108/07, a/0112/07, a/0115/07, a/0118/07, a/0125/07 and a/0109/06 think that reparations will not be granted by a national system since the criteria for reparations are not clear or inexistent.

55. Victims a/0010/06, a/0064/06, a/0086/06, a/0111/06, a/0080/07, a/0089/07, a/0098/07, a/0103/07, a/0105/07, a/0108/07, a/0117/07, a/0118/07, a/0122/07, a/0065/06, a/0088/06, a/0091/06, a/0096/06 and the victim met in Pader District believe that the ICC will be impartial and will take into account the victims' views. Moreover, victims a/0064/06, a/0084/06, a/0086/06, a/0097/06, a/0099/06, a/0080/07, a/0084/07, a/0086/07, a/0089/07, a/0098/07, a/0105/07, a/0106/07, a/0107/07, a/0115/07, a/0118/07 and a/0092/06 believe that an international trial is the only way for the world to recognise the crimes committed by the LRA/M through a fair and expeditious trial. Moreover, victims a/0099/06 and a/0100/07 want the LRA/M members to be imprisoned outside the Ugandan territory. Last, some victims consider that holding a trial in Uganda would destabilise the country and that traditional justice would lead to impunity.

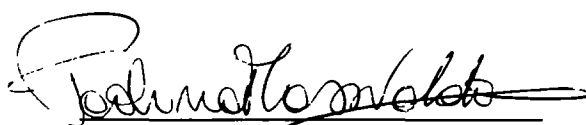
56. Finally, on 16 November 2008, the Office received 162 questionnaires from victims residing in the districts of Amuria, Oyam, Moyo and Adjumani. These victims have already submitted applications for participation. However, the VPRS has not yet processed these applications and, therefore, no registration number is currently available. These victims share the same concerns expressed above.¹³⁰ In particular, they emphasise that, in their opinion, a national jurisdiction will not

¹³⁰ See *supra* paras. 51-55.

provide adequate right of participation for victims and they fear that a Ugandan court will not be neutral and independent.¹³¹

FOR THE FOREGOING REASONS,

The Office respectfully asks the Pre-Trial Chamber to take these observations into consideration and to suspend the proceedings under article 19(1) of the Rome Statute; or, in the alternative, to declare the case admissible pending the effective establishment of the Special division of the High Court. Indeed, nothing precludes the Pre-Trial Chamber to trigger the proceedings under article 19(1) of the Rome Statute once more at a later stage in time.



Paolina Massidda

Principal Counsel

Office of Public Counsel for Victims

Done in English

Dated this 18th day of November 2008

At The Hague (The Netherlands)

¹³¹ See annexes 75-100.