

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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No.: ICC-02/04  
Date: 10 August 2007

**PRE-TRIAL CHAMBER II**

**Before:** Judge Mauro Politi, Single Judge

**Registrar:** Mr Bruno Cathala

**SITUATION IN UGANDA**

**Public Redacted Version**

**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**

**The Office of the Prosecutor**

Mr Luis Moreno Ocampo, Prosecutor  
Ms Fatou Bensouda, Deputy Prosecutor  
Mr Eric MacDonald, Trial Lawyer

**Ad hoc Counsel for the Defense**

Ms Michelyne C. Saint-Laurent  
**The Office of Public Counsel for  
Victims**  
Ms Paolina Massidda

**I, Judge Mauro Politi**, judge at the International Criminal Court (“the Court”);

**NOTING** the “*Decision designating a Single Judge for victims’ issues*”, dated 22 November 2006,<sup>1</sup> whereby Pre-Trial Chamber II (“the Chamber”) designated Judge Mauro Politi as Single Judge responsible for all issues arising in connection with victims’ participation in the proceedings in respect of the situation in Uganda (“the Situation”) and in the case of *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen* (“the Case”);

**NOTING** the victims’ applications for participation in the proceedings, filed by the Registrar in the record of the Situation on 19 June 2006<sup>2</sup> and 17 August 2006,<sup>3</sup> and in the record of the Case on 21 August 2006;<sup>4</sup>

**NOTING** the *ex parte* report filed by the Registrar in accordance with rule 89, sub-rule 1, of the Rules of Procedure and Evidence (“the Rules”) and regulation 86, sub-regulation 5, of the Regulations of the Court (“the Regulations”) in the Situation on 16 October 2006,<sup>5</sup> 23 October 2006<sup>6</sup> and 16 November 2006,<sup>7</sup> and in the Case on 4

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<sup>1</sup> ICC-02/04-01/05-130.

<sup>2</sup> *Application to participate a/0010/06* (ICC-02/04-22-Conf-Exp).

<sup>3</sup> *Application for participation a/0064/06* (ICC-02/04-23-Conf-Exp); *Application for participation a/0065/06* (ICC-02/04-24-Conf-Exp); *Application for participation a/0066/06* (ICC-02/04-25-Conf-Exp); *Application for participation a/0067/06* (ICC-02/04-26-Conf-Exp); *Application for participation a/0068/06* (ICC-02/04-27-Conf-Exp); *Application for participation a/0069/06* (ICC-02/04-28-Conf-Exp); *Application for participation a/0070/06* (ICC-02/04-29-Conf-Exp).

<sup>4</sup> *Application for participation a/0010/06* (ICC-02/04-01/05-98-Conf-Exp); *Application for participation a/0064/06* (ICC-02/04-01/05-99-Conf-Exp); *Application for participation a/0065/06* (ICC-02/04-01/05-100-Conf-Exp); *Application for participation a/0066/06* (ICC-02/04-01/05-101-Conf-Exp); *Application for participation a/0067/06* (ICC-02/04-01/05-102-Conf-Exp); *Application for participation a/0068/06* (ICC-02/04-01/05-103-Conf-Exp); *Application for participation a/0069/06* (ICC-02/04-01/05-104-Conf-Exp); *Application for participation a/0070/06* (ICC-02/04-01/05-105-Conf-Exp).

<sup>5</sup> *Report to Pre-Trial Chamber II on applications a/0010/06, a/0064/06 to a/0070/06 in accordance with Rule 89 paragraph 1 of the Rules of Procedure and Evidence, and Regulation 86, paragraph 5 of the Regulations of the Court* (ICC-02/04-30-Conf-Exp).

September 2006,<sup>8</sup> 16 October 2006,<sup>9</sup> 26 October 2006<sup>10</sup> and 16 November 2006<sup>11</sup> (“the Registrar’s Reports”), as well as the victims’ applications for participation annexed thereto;

**NOTING** the Single Judge’s *“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”* dated 1 February 2007 (“the 1 February 2007 Decision”);<sup>12</sup>

**NOTING** articles 15 paragraph 3, 53, 56, 57, paragraph 3(c) and 68, paragraph 3, of the Statute of the Court (“the Statute”); rules 50, 59, 85, 89, 92, 93 and 119 of the Rules; regulations 50, sub-regulation 1, 81, sub-regulation 4, of the Regulations;

## **HEREBY RENDER THIS DECISION:**

### **1. Procedural history**

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<sup>6</sup> Report to Pre-Trial Chamber II on applications a/0081/06 to a/0104/06 in accordance with Rule 89 paragraph 1 of the Rules of Procedure and Evidence, and Regulation 86, paragraph 5 of the Regulations of the Court (ICC-02/04-32-Conf-Exp).

<sup>7</sup> Report to Pre-Trial Chamber II on applications a/0111/06 to a/0127/06 in accordance with Rule 89 paragraph 1 of the Rules of Procedure and Evidence, and Regulation 86, paragraph 5 of the Regulations of the Court (ICC-02/04-33-Conf-Exp).

<sup>8</sup> Report to Pre-Trial Chamber II on application a/0010/06 in accordance with Rule 89 paragraph 1 of the Rules of Procedure and Evidence, and Regulation 86, paragraph 5 of the Regulations of the Regulations of the Court (ICC-02/04-01/05-109-Conf-Exp).

<sup>9</sup> Report to Pre-Trial Chamber II on applications a/0064/06 to a/0070/06 in accordance with Rule 89 paragraph 1 of the RPE, and Regulation 86 paragraph 5 of the Regulations of the Regulations of the Court (ICC-02/04-01/05-120-Conf-Exp).

<sup>10</sup> Report to Pre-Trial Chamber II on applications a/0081/06 to a/0104/06 in accordance with Rule 89 paragraph 1 of the RPE, and Regulation 86 paragraph 5 of the Regulations of the Regulations of the Court (ICC-02/04-01/05-123-Conf-Exp).

<sup>11</sup> Report to Pre-Trial Chamber II on applications a/0111/06 to a/0127/06 in accordance with Rule 89 paragraph 1 of the RPE, and Regulation 86 paragraph 5 of the Regulations of the Regulations of the Court (ICC-02/04-01/05-128-Conf-Exp).

<sup>12</sup> ICC-02/04-01/05-134.

2. At the time of the 1 February 2007 Decision, 49 applications for participation in the Situation<sup>13</sup> and in the Case<sup>14</sup> (hereinafter collectively referred to as “the Applications”) had been filed on a confidential basis with the Chamber.

<sup>13</sup> a/0010/06 (ICC-02/04-22-Conf-Exp); a/0064/06 (ICC-02/04-23-Conf-Exp); a/0065/06 (ICC-02/04-24-Conf-Exp); a/0066/06 (ICC-02/04-25-Conf-Exp); a/0067/06 (ICC-02/04-26-Conf-Exp); a/0068/06 (ICC-02/04-27-Conf-Exp); a/0069/06 (ICC-02/04-28-Conf-Exp); a/0070/06 (ICC-02/04-29-Conf-Exp); a/0081/06 (ICC-02/04-32-Conf-Exp-Anx1); a/0082/06 (ICC-02/04-32-Conf-Exp-Anx2); a/0083/06 (ICC-02/04-32-Conf-Exp-Anx3); a/0084/06 (ICC-02/04-32-Conf-Exp-Anx4); a/0085/06 (ICC-02/04-32-Conf-Exp-Anx5); a/0086/06 (ICC-02/04-32-Conf-Exp-Anx6); a/0087/06 (ICC-02/04-32-Conf-Exp-Anx7); a/0088/06 (ICC-02/04-32-Conf-Exp-Anx8); a/0089/06 (ICC-02/04-32-Conf-Exp-Anx9); a/0090/06 (ICC-02/04-32-Conf-Exp-Anx10); a/0091/06 (ICC-02/04-32-Conf-Exp-Anx11); a/0092/06 (ICC-02/04-32-Conf-Exp-Anx12); a/0093/06 (ICC-02/04-32-Conf-Exp-Anx13); a/0094/06 (ICC-02/04-32-Conf-Exp-Anx14); a/0095/06 (ICC-02/04-32-Conf-Exp-Anx15); a/0096/06 (ICC-02/04-32-Conf-Exp-Anx16); a/0097/06 (ICC-02/04-32-Conf-Exp-Anx17); a/0098/06 (ICC-02/04-32-Conf-Exp-Anx18); a/0099/06 (ICC-02/04-32-Conf-Exp-Anx19); a/0100/06 (ICC-02/04-32-Conf-Exp-Anx20); a/0101/06 (ICC-02/04-32-Conf-Exp-Anx21); a/0102/06 (ICC-02/04-32-Conf-Exp-Anx22); a/0103/06 (ICC-02/04-32-Conf-Exp-Anx23); a/0104/06 (ICC-02/04-32-Conf-Exp-Anx24); a/0111/06 (ICC-02/04-33-Conf-Exp-Anx1); a/0112/06 (ICC-02/04-33-Conf-Exp-Anx2); a/0113/06 (ICC-02/04-33-Conf-Exp-Anx3); a/0114/06 (ICC-02/04-33-Conf-Exp-Anx4); a/0115/06 (ICC-02/04-33-Conf-Exp-Anx5); a/0116/06 (ICC-02/04-33-Conf-Exp-Anx6); a/0117/06 (ICC-02/04-33-Conf-Exp-Anx7); a/0118/06 (ICC-02/04-33-Conf-Exp-Anx8); a/0119/06 (ICC-02/04-33-Conf-Exp-Anx9); a/0120/06 (ICC-02/04-33-Conf-Exp-Anx10); a/0121/06 (ICC-02/04-33-Conf-Exp-Anx11); a/0122/06 (ICC-02/04-33-Conf-Exp-Anx12); a/0123/06 (ICC-02/04-33-Conf-Exp-Anx13); a/0124/06 (ICC-02/04-33-Conf-Exp-Anx14); a/0125/06 (ICC-02/04-33-Conf-Exp-Anx15); a/0126/06 (ICC-02/04-33-Conf-Exp-Anx16); a/0127/06 (ICC-02/04-33-Conf-Exp-Anx17).

<sup>14</sup> a/0010/06 (ICC-02/04-01/05-98-Conf-Exp); a/0064/06 (ICC-02/04-01/05-99-Conf-Exp); a/0065/06 (ICC-02/04-01/05-100-Conf-Exp); a/0066/06 (ICC-02/04-01/05-101-Conf-Exp); a/0067/06 (ICC-02/04-01/05-102-Conf-Exp); a/0068/06 (ICC-02/04-01/05-103-Conf-Exp); a/0069/06 (ICC-02/04-01/05-104-Conf-Exp); a/0070/06 (ICC-02/04-01/05-105-Conf-Exp); a/0081/06 (ICC-02/04-01/05-123-Conf-Exp-Anx1); a/0082/06 (ICC-02/04-01/05-123-Conf-Exp-Anx2); a/0083/06 (ICC-02/04-01/05-123-Conf-Exp-Anx3); a/0084/06 (ICC-02/04-01/05-123-Conf-Exp-Anx4); a/0085/06 (ICC-02/04-01/05-123-Conf-Exp-Anx5); a/0086/06 (ICC-02/04-01/05-123-Conf-Exp-Anx6); a/0087/06 (ICC-02/04-01/05-123-Conf-Exp-Anx7); a/0088/06 (ICC-02/04-01/05-123-Conf-Exp-Anx8); a/0089/06 (ICC-02/04-01/05-123-Conf-Exp-Anx9); a/0090/06 (ICC-02/04-01/05-123-Conf-Exp-Anx10); a/0091/06 (ICC-02/04-01/05-123-Conf-Exp-Anx11); a/0092/06 (ICC-02/04-01/05-123-Conf-Exp-Anx12); a/0093/06 (ICC-02/04-01/05-123-Conf-Exp-Anx13); a/0094/06 (ICC-02/04-01/05-123-Conf-Exp-Anx14); a/0095/06 (ICC-02/04-01/05-123-Conf-Exp-Anx15); a/0096/06 (ICC-02/04-01/05-123-Conf-Exp-Anx16); a/0097/06 (ICC-02/04-01/05-123-Conf-Exp-Anx17); a/0098/06 (ICC-02/04-01/05-123-Conf-Exp-Anx18); a/0099/06 (ICC-02/04-01/05-123-Conf-Exp-Anx19); a/0100/06 (ICC-02/04-01/05-123-Conf-Exp-Anx20); a/0101/06 (ICC-02/04-01/05-123-Conf-Exp-Anx21); a/0102/06 (ICC-02/04-01/05-123-Conf-Exp-Anx22); a/0103/06 (ICC-02/04-01/05-123-Conf-Exp-Anx23); a/0104/06 (ICC-02/04-01/05-123-Conf-Exp-Anx24); a/0111/06 (ICC-02/04-01/05-128-Conf-Exp-Anx1); a/0112/06 (ICC-02/04-01/05-128-Conf-Exp-Anx2); a/0113/06 (ICC-02/04-01/05-128-Conf-Exp-Anx3); a/0114/06 (ICC-02/04-01/05-128-Conf-Exp-Anx4); a/0115/06 (ICC-02/04-01/05-128-Conf-Exp-Anx5); a/0116/06 (ICC-02/04-01/05-128-Conf-Exp-Anx6); a/0117/06 (ICC-02/04-01/05-128-Conf-Exp-Anx7); a/0118/06 (ICC-02/04-01/05-128-Conf-Exp-Anx8); a/0119/06 (ICC-02/04-01/05-128-Conf-Exp-Anx9); a/0120/06 (ICC-02/04-01/05-128-Conf-Exp-Anx10); a/0121/06 (ICC-02/04-01/05-128-Conf-Exp-Anx11); a/0122/06 (ICC-02/04-01/05-128-Conf-Exp-Anx12); a/0123/06 (ICC-02/04-01/05-128-Conf-Exp-Anx13); a/0124/06 (ICC-02/04-01/05-128-Conf-Exp-Anx14); a/0125/06 (ICC-02/04-01/05-128-Conf-Exp-Anx15); a/0126/06 (ICC-02/04-01/05-128-Conf-Exp-Anx16); a/0127/06 (ICC-02/04-01/05-128-Conf-Exp-Anx17).

3. The 1 February 2007 Decision (i) determined that prior to the decision on the merits of the Applications, the appointment of one or more legal representatives to assist the applicants was neither necessary nor required in the interests of justice within the meaning of regulation 80, sub-regulation 1 of the Regulations; (ii) entrusted the Office of Public Counsel for Victims ("the OPCV") with the task of providing the applicants with any support and assistance which might be necessary or appropriate at that stage of the proceedings; (iii) appointed Ms Michelyne C. St-Laurent as Counsel for the Defence, entrusting her with the task of representing and protecting the interests of the Defence within the context and for the purposes of the proceedings on the Applications in the Situation and in the Case; (iv) ordered the Registrar to redact the Applications pursuant to the criteria set forth in paragraphs 21 and 22 of the Decision and to provide the Prosecutor and Counsel for the Defence with a redacted copy of the Applications; (v) set a time-limit for the Prosecutor and the Defence to submit their observations on the applications, pursuant to rule 89 of the Rules.
4. Since then, a number of procedural developments have followed. In particular, the Prosecutor submitted several applications,<sup>15</sup> including a request for leave to appeal,<sup>16</sup> aimed at securing access to unredacted versions of the Applications. The Prosecutor's applications were dismissed by the Single Judge on various grounds.<sup>17</sup> The Single Judge granted access to unredacted copies of the warrants of arrest to the OPCV and heard the latter in closed session on issues pertaining to

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<sup>15</sup> *Application to lift redactions from applications for victims' participation to be provided to the OTP* (ICC-02/04-01/05-150); *Prosecution's further submissions supplementing its "Application to lift redactions from applications for victims' participation to be provided to the OTP", dated 6 February 2007, and request for extension of time* (ICC-02/04-01/05-208); *Prosecution's application under Regulation 42(3) to vary protective measures by lifting redactions from applications for victims' participation provided to the OTP, and to submit a further reply under rule 89(1) in the case and situation* (ICC-02/04-88 and ICC-02/04-01/05-231).

<sup>16</sup> ICC-02/04-01/05-212.

<sup>17</sup> *Decision on Prosecutor's "Application to lift redactions from applications for victims' participation to be provided to the OTP" and on the Prosecution's further submissions supplementing such Application, and request for extension of time* (ICC-02/04-01/05-209); *Decision on the "Prosecution's request for leave to appeal the decision denying the 'Application to lift redactions from applications for victims' participation to be provided to the OTP'"* (ICC-02/04-01/05-219).

victims' security and on specific aspects of the OPCV's mandate.<sup>18</sup> The Victims Participation and Reparations Section ("VPRS") filed redacted versions of the Applications in the record of both the Situation<sup>19</sup> and the Case.<sup>20</sup> The Prosecutor<sup>21</sup> and Counsel for the Defence<sup>22</sup> submitted their observations on the Applications both in the Situation and in the Case pursuant to rule 89, sub-rule 1, of the Rules, and the Single Judge dismissed as inadmissible<sup>23</sup> the observations on the Applications filed by the OPCV both in the Situation<sup>24</sup> and in the Case.<sup>25</sup>

*Purpose and scope of this decision*

5. This is the first decision to be rendered on applications for participation in the Situation and in the Case. Accordingly, prior to assessing the merits of the Applications, the Single Judge will, whenever appropriate, take into account the principles established and the practice followed so far by the Court in the area of victims' participation, with particular focus on the jurisprudence of Pre-Trial Chamber I in the situation in the Democratic Republic of the Congo. More specifically, it appears necessary, firstly, to determine whether and to what extent the principles established by that jurisprudence appear to be relevant to the Situation and/or to the Case and may assist the Single Judge in determining the merits of the Applications and, secondly, to establish whether such principles may be supplemented with a view to further enhancing the efficiency and predictability of proceedings, in particular as regards the role that victims are called upon to play before the Court depending on the nature and stage of the proceedings.

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<sup>18</sup> Decision on "Request to access documents and material", and to hold a hearing in camera and ex parte (ICC- ICC-02/04-01/05-152, public redacted version).

<sup>19</sup> ICC-02/04-36 to ICC-02/04-84 (all Conf.)

<sup>20</sup> ICC-02/04-01/05-157 to ICC-02/04-01/05-166 and ICC-02/04-01/05-167 to ICC-02/04-01/05-207 (all Conf.).

<sup>21</sup> ICC-02/04-85; ICC-02/04-01/05-214.

<sup>22</sup> ICC-02/04-01/05-216.

<sup>23</sup> ICC-02/04-01/05-243.

<sup>24</sup> ICC-02/04-89.

<sup>25</sup> ICC-02/04-01/05-232.

6. This decision will be limited to the applications which had been submitted at the time of the 1 February 2007 Decision. These are the only applications for which the initial procedural phases of adoption of appropriate protective measures, transmission to the Prosecutor and the Defence and submission of their observations pursuant to rule 89 of the Rules have already been completed.

*The role of victims before Pre-Trial Chamber I in the situation in the Democratic Republic of the Congo: principles and practice*

7. In its decision dated 17 January 2006,<sup>26</sup> Pre-Trial Chamber I held that, for the purposes of victims' participation within the meaning of article 68, paragraph 3, of the Statute, proceedings before the Court may be considered to exist at the stage of the investigation of a situation. It did so on the basis of a three-pronged argument: terminological, contextual and teleological. After highlighting the provisions under which the investigation of a situation was included in the term "proceedings", Pre-Trial Chamber I observed that, whilst article 68, paragraph 1 made explicit reference to the investigation stage, such stage was not excluded from the scope of paragraph 3 of the same provision, which specifically addresses victims' participation. Pre-Trial Chamber I further emphasised that an interpretation of article 68, paragraph 3, as encompassing the investigation stage of a situation was "*consistent with the object and purpose of the victims participation regime established by the drafters of the Statute*", as well as with "*the growing emphasis placed on the role of victims by the international body of human rights law and by international humanitarian law*".<sup>27</sup>

*The victims of the case and the requirement that the victims' personal interests be affected under article 68, paragraph 3 of the Statute*

8. Article 68, paragraph 3, of the Statute vests the Court (i.e., its Chambers) with broad discretion to determine at what stage and in which manner victims should

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<sup>26</sup> ICC-01/04-101-tEN-Corr.

<sup>27</sup> ICC-01/04-101-tEN-Corr., para. 50.

be allowed to participate in the proceedings.<sup>28</sup> Commentators have highlighted that whilst victims' right to intervene cannot be denied, the judges' control over the determination of the appropriate procedural phase in which their intervention will take place will ensure that victims make proper use of such right.<sup>29</sup> Pre-Trial Chamber I also pointed out that whilst article 68, paragraph 3, should be read "*as including the stage of investigation of a situation, and therefore as giving victims a general right of access to the Court at that stage*", such a right of access would be "*subject to the conditions laid down in that regard*".<sup>30</sup>

9. Pursuant to article 68, paragraph 3, of the Statute, the paramount criterion for participation to be allowed is that the "*personal interests*" of the applicant victims have to be affected. There seems to be little doubt, at least in principle (and unless the Chamber decides otherwise in relation to a specific proceeding), that this requirement is met whenever a victim (whether a natural person, an organisation or an institution pursuant to rule 85 of the Rules) applies for participation in proceedings following the issuance of a warrant of arrest or of a summons to appear for one or more individuals. These proceedings have a bearing on a case (i.e., one or more incidents during which one or more crimes within the jurisdiction of the Court appear to have been committed by one or more identified suspects)<sup>31</sup> where the said victim was allegedly involved; subject to the need for the Chamber to determine whether the constituent elements of the definition of victim under rule 85 of the Rules are present, the fact that such a victim's personal interests are "affected" by criminal proceedings relating to the event or events in question seems incontrovertible. Indeed, commentators regard the fact "*that*

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<sup>28</sup> Article 68 paragraph 3, of the Statute states that "*Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence*".

<sup>29</sup> David Donat-Cattin, in Comment to Article 68 – Protection of witnesses and their participation in the proceedings, in Otto Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court – Observers' Note, Article by Article*, p. 880.

<sup>30</sup> ICC-01/04-101-tEN-Corr, para. 46.

<sup>31</sup> ICC-01/04-101-tEN-Corr, para. 65.

*individuals who suffered harm from a criminal conduct have a personal interest in the criminal process related to that conduct*” as a self-evident assumption; accordingly, they consider that reference to “*personal interests*” as a condition for being allowed to present views in Court under these circumstances does nothing but mirror such assumption.<sup>32</sup>

10. That the personal interests of a victim are affected in respect of proceedings relating to the very crime in which that victim was allegedly involved seems entirely in line with the nature of the Court as a judicial institution with a mission to end impunity for the most serious crimes. This was evident throughout the negotiations leading up to the adoption of the Statute, during which most delegates “*doubtless thought it morally right to provide to persons who have suffered serious violations of humanitarian law, the right to participate in the trial of the perpetrators of those violations and to ensure, during the course of the proceedings, that the Court is fully apprised of their personal sufferings*”.<sup>33</sup>

#### ***Analysis of the Applications relating to the Case***

11. In light of the above, the Single Judge will first assess the merits of applications relating to the Case, whereby the personal interests of the applicants can be deemed in general terms as being *per se* affected. Twenty one out of the 49 Applications relate to incidents included in the warrants of arrest issued by the Chamber on 8 July 2005 for Joseph Kony,<sup>34</sup> Vincent Otti,<sup>35</sup> Okot Odhiambo<sup>36</sup> and Dominic Ongwen.<sup>37</sup> As was the case in the situation in the Democratic Republic of the Congo, all the applicants are natural persons. Accordingly, rule 85 (a) of the Rules is the relevant provision against which the merits of each of these applications must be assessed. It provides that the term “*‘victims’ means natural*

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<sup>32</sup> David Donat-Cattin, see *supra* note 29, p. 879.

<sup>33</sup> Claude Jorda and Jérôme De Hemptienne, *The Status and Role of the Victim*, in Cassese-Gaeta-Jones, *The Rome Statute of the International Criminal Court: A Commentary*, Volume II, p. 1400.

<sup>34</sup> ICC-02/04-01/05-53.

<sup>35</sup> ICC-02/04-01/05-54.

<sup>36</sup> ICC-02/04-01/05-56.

<sup>37</sup> ICC-02/04-01/05-57.

*persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court”.*

12. Accordingly, the Single Judge will undertake such assessment by analysing (i) whether the identity of the applicant as a natural person appears duly established; (ii) whether the events described by each applicant constitute a crime within the jurisdiction of the Court; (iii) whether the applicant claims to have suffered harm; and (iv) most crucially, whether such harm appears to have arisen “as a result” of the event constituting a crime within the jurisdiction of the Court. While points (i) and (iii) appear to imply an analysis of fact, since they essentially evaluate the adequacy of the supporting evidence made available to the Chamber, points (ii) and (iv) also have to be assessed in light of the relevant normative elements to be found in the Statute. Furthermore, since no harm, however serious, would be of relevance in the Court’s proceedings unless it resulted from the commission of a crime within the jurisdiction of the Court, the Single Judge considers that it is appropriate that the analysis of that element precede the one concerning the existence of harm.
  
13. As regards the method of examination and the required standard of proof, the Statute does not set forth general rules on the basis of which the reliability of relevant elements is to be assessed, except in respect of specific instances: namely, the rights of a person being questioned by the Prosecutor or national authorities pursuant to article 55, paragraph 2; the issuance of a warrant of arrest under article 58; the confirmation of the charges under article 61; and the determination of guilt under article 66, paragraph 3. Accordingly, in the absence of any such rules, the Chamber has a broad discretion in assessing the soundness of a given statement or other piece of evidence. Such an assessment has to comply with the general principle of law that the burden of proof of elements supporting a claim lies on the party making the claim. Furthermore, as pointed out by Pre-Trial Chamber I, the purpose of a decision under rule 89 of the Rules is not “*to make a definitive determination of the harm suffered by the victims, as this will be determined*

*subsequently, where appropriate, by the Trial Chamber in the context of a case”.*<sup>38</sup> Nor is it, the Single Judge would add, to make a final determination of the nature of the crimes which the events described by the applicant may constitute, or to analyse whether the constituent elements of each such crime are effectively present: both these analyses pertain to the determination of the guilt of the accused, rather than to the assessment of the status of victims whose personal interests are affected within the meaning of article 68, paragraph 3, of the Statute.

14. A similar approach appears equally appropriate in respect of the assessment of the existence of a link between the alleged incident and the harm alleged by the applicant victim. Whilst the determination of a causal link between a purported crime and the ensuing harm is one of the most complex theoretical issues in criminal law, the Single Judge shares Pre-Trial Chamber I’s view<sup>39</sup> that a determination of the specific nature of such a link goes beyond the purposes of a determination made under rule 89 of the Rules, whether in the context of a situation or of a case. In particular, whereas such an analysis may be required for the purposes of a reparation order, it does not seem required when the determination to permit an applicant to present “views and concerns” within the meaning of article 68, paragraph 3 of the Statute is at stake. Significantly, there is no reference to causality as such in rule 85 of the Rules, which simply refers to the harm having been suffered “as a result of” the alleged crime. The Single Judge will therefore refrain from analysing the various theories on causality and will instead adopt a pragmatic, strictly factual approach, whereby the alleged harm will be held as “resulting from” the alleged incident when the spatial and temporal circumstances surrounding the appearance of the harm and the occurrence of the incident seem to overlap, or at least to be compatible and not clearly inconsistent.
15. Accordingly, all the factors identified as relevant for the definition of victim provided by rule 85 of the Rules are to be proved to a level which might be considered satisfactory for the limited purposes of that rule. Furthermore, it is to

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<sup>38</sup> ICC-01/04-101-tEN-Corr, para. 82.

<sup>39</sup> ICC-01/04-101-tEN-Corr, para. 94.

be reasonably expected that victims will not necessarily or always be in a position to fully substantiate their claim. It is also accepted as a general principle of law that “indirect proof” (i.e., inferences of fact and circumstantial evidence) is admissible if it can be shown that the party bearing the burden of proof is hampered by objective obstacles from gathering direct proof of a relevant element supporting his or her claim; the more so when such indirect evidence appears to be based “on a series of facts linked together and leading logically to a single conclusion”.<sup>40</sup> Similarly to the method followed by Pre-Trial Chamber I, the Single Judge will therefore assess each statement by applicant victims first and foremost on the merits of its intrinsic coherence, as well as on the basis of information otherwise available to the Chamber.

16. The first area in which the need for selecting an appropriate standard of proof arises is the determination as to whether the existence and the identity of an applicant have been satisfactorily established. On the one hand, the Single Judge would point out that in a country such as Uganda, where many areas have been (and, to some extent, still are) ravaged by an ongoing conflict and communication and travelling between different areas may be difficult, it would be inappropriate to expect applicants to be able to provide a proof of identity of the same type as would be required of individuals living in areas not experiencing the same kind of difficulties. On the other hand, given the profound impact that the right to participate may have on the parties and, ultimately, on the overall fairness of the proceedings, it would be equally inappropriate not to require that some kind of proof meeting a few basic requirements be submitted. Accordingly, the Single Judge takes the view that, in principle, the identity of an applicant should be confirmed by a document (i) issued by a recognised public authority; (ii) stating the name and the date of birth of the holder, and (iii) showing a photograph of the holder.

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<sup>40</sup> International Court of Justice, “*Corfu Channel case*”, Judgment of April 9th, 1949: I.C.J. Reports 1949, p. 18.

17. An overview of the Applications shows that a number of Applicants submit a "voting card" as document proving their identity. This being a document meeting the three conditions listed above, the Single Judge will consider it as adequate proof of the existence and identity of the relevant applicant, provided that the information contained in the card is consistent with the information submitted in the application.
18. Some applications provide as "proof of identity" a statement by an individual belonging to a local authority, simply declaring that a given applicant "is a victim" of a specific incident. The Single Judge considers that this kind of document falls short of the requirements set forth above, especially since they do not include a photograph of the applicant and an indication of his or her date of birth. This kind of document can therefore not be taken into account for participation purposes.
19. Various types of documents ([REDACTED] cards, a certificate issued by [REDACTED], an [REDACTED] issued by [REDACTED]) are attached to the other applications. Since, in particular, none of these documents shows the date of birth of the holder, they also fall short of the threshold indicated above and cannot be considered sufficient for participation purposes.
20. At the same time, some clarifications are needed in those instances where only the voting card or other document of the person acting on behalf of a victim is provided. As regards applications submitted on behalf of a child (i.e., an individual not having attained 18 years of age), the Single Judge would request VPRS to submit a report indicating from what age the Ugandan legal and administrative system allows documents meeting the three conditions indicated above to be issued to individuals. This report should also provide information about the existence and obtainability, in the Ugandan legal or administrative system, of documents establishing the link between a child and a member of his or her family, such as birth certificates or other types of documents. The Single Judge reserves the right to decide upon the merits of those applications upon receipt of

such report. However, if the person is no longer a child, a document pertaining to the applicant is required.

21. As a result, decision on applications found to be deficient for lack of adequate proof of identity of the applicant will be deferred until adequate proof of identity is submitted or a report by VPRS is made available to the Single Judge pursuant to paragraph 20 above.

*The two groups of Applications relating to the Case*

22. The applications relating to the Case fall into two main groups: those relating to incidents which allegedly occurred at [REDACTED] IDP Camp and those relating to incidents which allegedly occurred at [REDACTED] IDP Camp. For the sake of clarity, the Single Judge will address applications relating to the same incident together, irrespective of the number they have been assigned and/or their date of submission.

*Applicant a/0010/06 ([REDACTED] IDP Camp)*

23. Application a/0010/06 is submitted by a [REDACTED] woman of Ugandan nationality and is supported by a proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, the Single Judge is of the view that, at this stage, the identity of Applicant a/0010/06 as a natural person is not established to a satisfactory degree for the purposes of participation in the proceedings and reserves the right to consider the merits of the application once adequate proof of identity is submitted.

*Applicant a/0097/06 ([REDACTED] IDP Camp)*

24. Application a/0097/06 is submitted by a [REDACTED] boy of Ugandan nationality and is supported by proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, this document does not meet the necessary requirements. However, in light of the age of the applicant, a decision on the merits of the application cannot be made until the Single Judge receives the VPRS report mentioned above.

*Applicant a/0081/06 ([REDACTED] IDP Camp)*

25. Application a/0081/06 is submitted by a [REDACTED] girl of Ugandan nationality and is supported by proof of identity consisting in [REDACTED]. In light of the age of the applicant, a decision on the merits of the application cannot be made until the Single Judge receives the VPRS report mentioned above.

*Applicant a/0090/06 ([REDACTED] IDP Camp)*

26. Application a/0090/06 is submitted by a [REDACTED] woman of Ugandan nationality and is supported by a proof of identity consisting in [REDACTED]. Accordingly, the Single Judge is satisfied that the existence and the identity of Applicant a/0090/06 as a natural person are duly established.
27. Applicant a/0090/06 is a member of the [REDACTED] tribe. She was [REDACTED] and is currently living in [REDACTED]. In [REDACTED] 2004, the precarious security situation in her original place of residence [REDACTED] in [REDACTED] IDP Camp. She alleges that on [REDACTED] 2004, at around [REDACTED] while eating at a campmate's home she "heard a bomb from the side of the barracks of the army" stationed to guard the camp. The ensuing battle between the attackers and the army saw the defeat of the former; after that, she saw "some strange soldiers running towards the camp while shouting that everyone in the camp should enter inside their houses". The attackers then started shooting at residents ([REDACTED]) and shouting that "[REDACTED]". She and some campmates (including [REDACTED]) managed to escape to a nearby [REDACTED] "through the bullets", from where they heard the attackers "jubilating after burning houses and killing over [REDACTED] people". She also alleges having heard [REDACTED] shouting, before the attackers left the place. One hour later, she recalls not answering a call allegedly by people from the army, encouraging people to come out from their hiding to be rushed to the hospital, fearing it might be a trap by the same attackers. Thus, it was not until the next morning that she was taken to the hospital to have her injuries treated. She alleges that she sustained burns on [REDACTED], resulting in [REDACTED] and in [REDACTED]

as well as the loss of all her belongings, which were inside her house which was set afire. She adds that she saw “many people in the camp being killed and others burnt inside houses”, this resulting in her being “totally traumatised”. She further alleges having been [REDACTED] and being denied access to her homeland. She adds that the group of attackers was under the command of [REDACTED] and mentions [REDACTED] as co-victims of the incident.

28. In support of her statements, she names [REDACTED] as witnesses, and submits a discharge report from [REDACTED].
29. The alleged events appear to fall within the jurisdiction of the Court, as follows: *ratione temporis*, since they occurred after the entry into force of the Statute and its ratification by Uganda; *ratione loci*, since they occurred at [REDACTED] IDP Camp, [REDACTED] District, Uganda;<sup>41</sup> and *ratione materiae*, since the facts alleged may constitute several crimes under the Statute, in particular, under article 7, paragraph 1(k) and/or article 8, paragraph 2(e)(i), and/or article 8, paragraph 2(e)(v).
30. The incidents related by Applicant a/0090/06 also appear to be included in the warrants of arrest issued in the Case. In July 2005, the Chamber found that there were reasonable grounds to believe that “on [REDACTED] 2004, an armed group attacked the [REDACTED] IDP Camp, also known as the [REDACTED] IDP Camp, in the [REDACTED] District, [REDACTED]<sup>42</sup> and started shooting at and hacking civilians; that the attack resulted in [REDACTED] houses being burnt and the [REDACTED]”. It recalled that, according to the sources submitted by the Prosecutor (in particular, Ugandan authorities and local hospital records), the attack resulted in the death of [REDACTED], as well as the wounding of [REDACTED].<sup>43</sup> Counts sixteen, seventeen, eighteen and nineteen of the warrant of arrest for Joseph Kony, Vincent Otti and Okot Odhiambo list, respectively,

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<sup>41</sup> Due to the alternative set out in article 12 of the Statute, there is no need for the Single Judge to analyse the requirement of jurisdiction *ratione personae*.

<sup>42</sup> REDACTED.

<sup>43</sup> Warrant of arrest for Joseph Kony, para. 21; Warrant of arrest for Vincent Otti, para. 22; Warrant of arrest for Okot Odhiambo, para. 17.

“murder at [REDACTED] IDP Camp constituting crimes against humanity” under articles 7, paragraph 1(a), and 25, paragraph 3(b); “murder at [REDACTED] IDP Camp constituting war crimes” under articles 8, paragraph 2(c)(i) and 25, paragraph 3(b), of the Statute; “attack against the civilian population at [REDACTED] IDP Camp constituting war crimes” under articles 8, paragraph 2(e)(i) and 25, paragraph 3(b), of the Statute; and “pillaging at [REDACTED] IDP Camp constituting war crimes” under articles 8, paragraph 2(e)(v) and 25, paragraph 3(b), of the Statute. Accordingly, the Single Judge considers that, for the purposes of this decision, the facts alleged by Applicant a/0090/06 appear to be supported by adequate evidence.

31. Both the physical injuries and the psychological trauma alleged by Applicant a/0090/06 might reasonably be the result of exposure to fire and/or random shooting, as well as of witnessing events of an exceedingly violent and shocking nature. Accordingly, they appear to constitute physical and emotional harm within the meaning of rule 85 of the Rules, as construed by Pre-Trial Chamber I. Applicant a/0090/06 also appears to have suffered economic loss.
32. In light of the above, the Single Judge is satisfied that Applicant a/0090/06 meets all the requirements of rule 85 of the Rules in respect of the Case and, accordingly, should be granted the status of victim in the Case.

***Applicant a/0094/06 ([REDACTED] IDP Camp)***

33. Application a/0094/06 is submitted by a [REDACTED] man of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, the Single Judge is of the view that, at this stage, the identity of Applicant a/0094/06 as a natural person is not established to a satisfactory degree for the purposes of participation in the proceedings and reserves the right to consider the merits of the application once adequate proof of identity is submitted.

***Applicant a/0095/06 ([REDACTED] IDP Camp)***

34. Application a/0095/06 is submitted by a [REDACTED] man of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, the Single Judge is of the view that, at this stage, the identity of Applicant a/0095/06 as a natural person is not established to a satisfactory degree for the purposes of participation in the proceedings and reserves the right to consider the merits of the application once adequate proof of identity is submitted.

*Applicant a/0098/06 ([REDACTED] IDP Camp)*

35. Application a/0098/06 is submitted by a [REDACTED] woman of Ugandan nationality and is supported by a proof of identity consisting in [REDACTED]. Accordingly, the Single Judge is satisfied that the existence and the identity of Applicant a/0098/06 as a natural person are duly established.
36. Applicant a/0098/06 is a member of the [REDACTED] tribe. She was [REDACTED] and is currently living in [REDACTED]. She alleges that on [REDACTED] 2004, she had just come back to the [REDACTED] IDP Camp at “an [REDACTED] hour”, when she heard gunshots from the area of the military barracks of the camp. Shortly thereafter, she saw soldiers inviting people to take shelter in their houses, followed by “a very large group of well-armed, militarily dressed people” shouting “[REDACTED]”. They started firing and bombing the camp, as well as setting houses ablaze and firing inside. Those who tried to escape and came out were “axed/slashed to death”. They came to her door, pointed a weapon “at gun-point” and started shooting around inside. As a consequence, she got two bullets on both sides of [REDACTED], before the house was set on fire. She managed to leave the house though “completely burnt from [REDACTED]” but lay outside since she could not move. Due to this, some fighters who had come back thought she had passed away. She adds that a campmate got beaten to death in the same incident. She claims to have suffered from burns on [REDACTED] and to continue to suffer from [REDACTED] and [REDACTED] pain from two bullet wounds and from having been beaten. She further claims to be traumatised as a result of pain

and “watching the dead bodies and how other would be instantly axed, beaten, and thrown in fire”. She also alleges having lost her house and all its contents. The observation by the Defence<sup>44</sup> that Applicant a/0098/06 does not identify either the armed group or the person responsible for the alleged events appears irrelevant, as the applicant indicates [REDACTED] and his troops as being responsible for the attack.

37. In support of her statements, she names two other victims of the same incident and two individuals as witnesses, whom she describes as “[REDACTED]”. She alleges having been “examined, treated and given all the medical documents”. However, she claims not to have access to these documents, or copies thereof on account of her distance from the hospital.
38. The alleged events appear to fall within the jurisdiction of the Court, as follows: *ratione temporis*, since they occurred after the entry into force of the Statute and its ratification by Uganda; *ratione loci*, since they occurred at [REDACTED] IDP Camp, [REDACTED] District, Uganda;<sup>45</sup> and *ratione materiae*, since the facts alleged may constitute several crimes under the Statute, in particular, under article 7, paragraph 1(a), and/or article 7, paragraph 1(k) and/or article 8, paragraph 2(e)(i), and/or article 8, paragraph 2(e)(v).
39. The incidents related by Applicant a/0098/06 also appear to be included in the warrants of arrest issued in the Case.<sup>46</sup> Accordingly, the Single Judge considers that, for the purposes of this decision, the facts alleged by Applicant a/0098/06 appear to be supported by adequate evidence.
40. Both the physical injuries and the psychological trauma alleged by Applicant a/0098/06 might reasonably be the result of exposure to shooting and burning. Accordingly, they appear to constitute physical and emotional harm within the

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<sup>44</sup> ICC-02/04-01/05-216, para. 27.

<sup>45</sup> Due to the alternative set out in article 12 of the Statute, there is no need for the Single Judge to analyse the requirement of jurisdiction *ratione personae*.

<sup>46</sup> See above, para. 30.

meaning of rule 85 of the Rules, as construed by Pre-Trial Chamber I. Applicant a/0098/06 also appears to have suffered economic loss.

41. In light of the above, the Single Judge is satisfied that Applicant a/0098/06 meets all the requirements of rule 85 of the Rules in respect of the Case and, accordingly, should be granted the status of victim in the Case.

*Applicant a/0100/06 ([REDACTED] IDP Camp)*

42. Application a/0100/06 is submitted by a [REDACTED] girl of Ugandan nationality and is supported by a proof of identity consisting in [REDACTED]. In light of the age of the applicant, a decision on the merits of the application cannot be made until the Single Judge receives the VPRS report mentioned above.

*Applicant a/0103/06 ([REDACTED] IDP Camp)*

43. Application a/0103/06 is submitted by a [REDACTED] woman of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. Such document does not meet the necessary requirements, in particular since it does not include a photograph of the applicant and her date of birth. In accordance with the principles set forth above, the Single Judge is of the view that, at this stage, the identity of Applicant a/0103/06 as a natural person is not established to a satisfactory degree for the purposes of participation in the proceedings and reserves the right to consider the merits of the application once adequate proof of identity is submitted.

*Applicant a/0111/06 ([REDACTED] IDP Camp)*

44. Application a/0111/06 is submitted by a [REDACTED] girl of Ugandan nationality and is supported by a proof of identity consisting in [REDACTED]. In light of the age of the applicant, a decision on the merits of the application cannot be made until the Single Judge receives the VPRS report mentioned above.

*Applicant a/0112/06 ([REDACTED] IDP Camp)*

45. Application a/0112/06 is submitted by a [REDACTED] man of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]<sup>47</sup>. Accordingly, the Single Judge is satisfied that the existence and the identity of Applicant a/0112/06 as a natural person are duly established.
46. Applicant a/0112/06 is a member of the [REDACTED] tribe. While he indicates having been [REDACTED], he also states that he is currently living at [REDACTED]. According to his statement, on [REDACTED] 2004, at around [REDACTED], while he was having dinner with his family, the [REDACTED] Camp came under attack. He heard gunshots from the barracks located on the eastern side of the camp as well as somebody shouting to stay inside. The attackers then reached the camp and started shooting and setting things ablaze. He heard shouts from people being "pounded, shot, axed". His own house came under fire; [REDACTED] women were hit by bullets and he himself sustained burns from fire debris falling upon him. His [REDACTED] and [REDACTED] were seriously burnt. He was transported to [REDACTED] the following morning together with "hundreds of wounded". Due to exposure to the fire, he alleges deformation of his [REDACTED] and ensuing difficulty in [REDACTED]. He further mentions the fact that REDACTED suffered from the shooting, that all his belongings were burnt, and that he was REDACTED from his original house.
47. In support of his statements, he names three individuals as victims of the same incident and two others ([REDACTED]) as witnesses. He does not submit any document in support of the injuries he allegedly sustained, nor does he provide any explanation therefor.
48. The alleged events appear to fall within the jurisdiction of the Court, as follows: *ratione temporis*, since they occurred after the entry into force of the Statute and its ratification by Uganda; *ratione loci*, since they occurred at [REDACTED] IDP

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<sup>47</sup> ICC-02/04-96-Conf-Exp, "Supplementary report to Pre-Trial Chamber II on applications a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06, a/0111/06 to a/127/06, and a/0014/07 to a/0020/07 in accordance with rule 89, paragraph 3 of the Rules of Procedure and Evidence, and regulation 86, paragraph 4 of the Regulations of the Court", p. 9.

Camp, [REDACTED] District, Uganda;<sup>48</sup> and *ratione materiae*, since the facts alleged may constitute several crimes under the Statute, in particular, under article 7, paragraph 1(a), and/or article 7, paragraph 1(k) and/or article 8, paragraph 2(e)(i), and/or article 8, paragraph 2(e)(v).

49. The incidents related by Applicant a/0112/06 also appear to be included in the warrants of arrest issued in the Case.<sup>49</sup> Accordingly, the Single Judge considers that, for the purposes of this decision, the facts alleged by Applicant a/0112/06 appear to be supported by adequate evidence.
50. The physical injuries alleged by Applicant a/0112/06 might reasonably be the result of suffering severe burns. Accordingly, they appear to constitute physical harm within the meaning of rule 85 of the Rules as construed by Pre-Trial Chamber I. Applicant a/0112/06 also appears to have suffered economic loss.
51. In light of the above, the Single Judge is satisfied that Applicant a/0112/06 meets all the requirements of rule 85 of the Rules in respect of the Case and, accordingly, should be granted the status of victim in the Case.

***Applicant a/0113/06 ([REDACTED] IDP Camp)***

52. Application a/0113/06 is submitted by a [REDACTED] girl of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In light of the age of the applicant, a decision on the merits of the application cannot be made until the Single Judge receives the VPRS report mentioned above.

***Applicant a/0116/06 ([REDACTED] IDP Camp)***

53. Application a/0116/06 is submitted by a [REDACTED] girl of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In light of the age of the applicant, a decision on the merits of the application cannot be made until the Single Judge receives the VPRS report mentioned above.

***Applicant a/0117/06 ([REDACTED] IDP Camp)***

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<sup>48</sup> Due to the alternative set out in article 12 of the Statute, there is no need for the Single Judge to analyse the requirement of jurisdiction *ratione personae*.

<sup>49</sup> See above, para. 30.

54. Application a/0117/06 is submitted by an [REDACTED] man of Ugandan nationality. It is supported by a proof of identity consisting in a [REDACTED]. In accordance with the principles set forth above, this document does not meet the necessary requirements. Therefore, the Single Judge is of the view that, at this stage, the identity of Applicant a/0117/06 as a natural person is not established to a satisfactory degree for the purposes of participation in the proceedings, and reserves the right to consider the merits of the application once adequate proof of identity is submitted.

*Applicant a/0118/06 ([REDACTED] IDP Camp)*

55. Application a/0118/06 is submitted by a [REDACTED] man of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. Accordingly, the Single Judge is satisfied that the existence and the identity of Applicant a/0118/06 as a natural person are duly established.
56. Applicant a/0118/06 is a member of the [REDACTED] tribe. He currently lives at [REDACTED]. He alleges that on the evening of [REDACTED] 2004, LRA rebels, who were "as many as over 250", attacked the [REDACTED] Camp where he was living at the time. After defeating the Uganda People's Defence Forces (UPDF) "who were made to guard the camp", they started "shooting at everyone that was in the camp and burning all their houses". As the residents of the camp had previously been instructed to hide inside their house in case of an attack, and as that day the UPDF were shouting that the civilians should go inside, Applicant a/0118/06 went inside his house with his [REDACTED] children and [REDACTED]. When the LRA fighters reached his house, they set it ablaze and fired inside, killing [REDACTED], who were burnt in the house. The applicant ran outside and was shot in [REDACTED], but managed to hide in another house. His [REDACTED] other children, who were following him, were shot dead and burnt. As the house in which the applicant had taken refuge had also been set ablaze, he covered himself with a "heap of blocks", but nevertheless sustained burns on his [REDACTED], his [REDACTED] and his [REDACTED] because of ashes falling on

him. As a result of these events, Applicant a/0118/06 claims that his [REDACTED] is deformed because he had been shot in [REDACTED] and alleges feeling [REDACTED] pain as a result of having hidden underneath the blocks. He also suffers from the loss of [REDACTED] and of [REDACTED] of his children, and states that all his belongings were burnt during the attack.

57. In support of his statements, Applicant a/0118/06 names three individual as victims of the same incident and two witnesses: [REDACTED]. Although the applicant states having received medical treatment at the [REDACTED] Hospital, he does not submit any documents in support of the injuries he allegedly sustained. The explanation provided by the applicant is that all his medical documents were destroyed in a fire that broke out in [REDACTED], where he was settled after the events.
58. The alleged events appear to fall within the jurisdiction of the Court, as follows: *ratione temporis*, since they occurred after the entry into force of the Statute and its ratification by Uganda; *ratione loci*, since they occurred at [REDACTED] IDP Camp, [REDACTED] District, Uganda;<sup>50</sup> and *ratione materiae*, since the facts alleged may constitute several crimes under the Statute, in particular, under article 7, paragraph 1(a), and/or article 7, paragraph 1(k) and/or article 8, paragraph 2(e)(i), and/or article 8, paragraph 2(e)(v).
59. The incidents related by Applicant a/0118/06 also appear to be included in the warrants of arrest issued in the Case.<sup>51</sup> Accordingly, the Single Judge considers that, for the purposes of this decision, the facts alleged by Applicant a/0118/06 appear to be supported by adequate evidence.
60. The physical injuries alleged by Applicant a/0118/06 might reasonably be the result of being shot at and forced to cover oneself with heavy blocks in order to avoid being burnt. Accordingly, they appear to constitute physical harm within the meaning of rule 85 of the Rules, as construed by Pre-Trial Chamber I.

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<sup>50</sup> Due to the alternative set out in article 12 of the Statute, there is no need for the Single Judge to analyse the requirement of jurisdiction *ratione personae*.

<sup>51</sup> See above, para. 30.

Applicant a/0118/06 also appears to have suffered economic loss, as all his belongings were burnt, as well as emotional harm due to the loss of his [REDACTED] and children.

61. In light of the above, the Single Judge is satisfied that Applicant a/0118/06 meets all the requirements of rule 85 of the Rules in respect of the Case and, accordingly, should be granted the status of victim in the Case.

*Applicant a/0119/06 ([REDACTED] IDP Camp)*

62. Application a/0119/06 is submitted by a [REDACTED] man of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. Accordingly, the Single Judge is satisfied that the existence and the identity of Applicant a/0119/06 as a natural person are duly established.
63. Applicant a/0119/06 is a member of the [REDACTED] tribe. He currently lives in [REDACTED]. Among other allegations that appear to fall beyond the scope of the Case, he claims to have suffered from an attack on the [REDACTED] IDP Camp where he was living. During the attack, which took place on [REDACTED] 2004, the attackers set his house on fire. As a consequence, he lost all his belongings. Applicant a/0119/06 adds that “over [REDACTED] civilians” were killed during that attack, and that the LRA fighters, led by [REDACTED], are responsible for the attack.
64. In support of his statements, Applicant a/0119/06 provides the names of two witnesses to the incidents. One of these witnesses is [REDACTED] and provides a description of the incidents that is consistent with the statement of Applicant a/0119/06. Applicant a/0119/06 does not submit any document in support of the loss he allegedly suffered.
65. The alleged events appear to fall within the jurisdiction of the Court, as follows: *ratione temporis*, since they occurred after the entry into force of the Statute and its ratification by Uganda; *ratione loci*, since they occurred at [REDACTED] IDP

Camp, [REDACTED] District, Uganda;<sup>52</sup> and *ratione materiae*, since the facts alleged may constitute several crimes under the Statute, in particular, under article 8, paragraph 2(e)(v).

66. The incidents related by Applicant a/0119/06 appear also to be included in the warrants of arrest issued in the Case.<sup>53</sup> Accordingly, the Single Judge considers that, for the purposes of this decision, the facts alleged by Applicant a/0119/06 appear to be supported by adequate evidence.
67. The destruction of all of Applicant a/0119/06's belongings might reasonably be the result of the attack on the [REDACTED] IDP Camp. Accordingly, Applicant a/0119/06 appears to have suffered economic loss within the meaning of rule 85 of the Rules as construed by Pre-Trial Chamber I.
68. In light of the above, the Single Judge is satisfied that Applicant a/0119/06 meets all the requirements of rule 85 of the Rules in respect of the Case and, accordingly, should be granted the status of victim in the Case.

*Applicant a/0120/06 ([REDACTED] IDP Camp)*

69. Application a/0120/06 is submitted by a [REDACTED] woman of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, the Single Judge is of the view that, at this stage, the identity of Applicant a/0120/06 as a natural person is not established to a satisfactory degree for the purposes of participation in the proceedings and reserves the right to consider the merits of the application once adequate proof of identity is submitted.

*Applicant a/0121/06 ([REDACTED] IDP Camp)*

70. Application a/0121/06 is submitted by an [REDACTED] boy of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, this document would not meet the

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<sup>52</sup> Due to the alternative set out in article 12 of the Statute, there is no need for the Single Judge to analyse the requirement of jurisdiction *ratione personae*.

<sup>53</sup> See above, para. 30.

necessary requirements. However, in light of the age of the applicant, a decision on the merits of the application cannot be made until the Single Judge receives the VPRS report mentioned above.

*Applicant a/0122/06 ([REDACTED] IDP Camp)*

71. Application a/0122/06 is submitted by a [REDACTED] man of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. Accordingly, the Single Judge is satisfied that the existence and the identity of Applicant a/0122/06 as a natural person are duly established.
72. Applicant a/0122/06 is a member of the [REDACTED] tribe. He currently lives in [REDACTED]. He alleges that on [REDACTED] 2004, at around [REDACTED], a group of combatants "dressed in the Ugandan army uniforms" started to attack the [REDACTED] IDP Camp while he was outside "grazing his cattle". He then began to run to the camp to rescue his family, but then stopped in order to avoid being shot. As he tried to escape, the attackers saw him and started shooting at him. He was shot in the [REDACTED], but managed to reach [REDACTED]. [REDACTED] and [REDACTED] were killed and all his belongings were burnt during the attack on the [REDACTED] IDP Camp. Applicant a/0122/06 further claims that he still feels pain in [REDACTED] and is therefore "[REDACTED]", because he cannot [REDACTED] properly when he feels pain in [REDACTED]. He is convinced that the attack "could have been planned by the top UPDF commanders, since they had earlier on ordered the civilians that in case of a fight, everyone in the camp should enter their houses, and on this same day, they kept shouting that civilians should rush entering their house". He also states that [REDACTED] is responsible for the attack because it had provided few soldiers to guard the civilians ("[REDACTED]"). During one of the missions conducted by the VPRS in Uganda in November 2006 and February 2007, he declared that he believed that the UPDF were responsible for the attack because "the attackers were wearing clothes similar to those worn by the UPDF". He added that for the

purpose of legal representation, he would not object to being included in a group composed of victims who allege that they were attacked by LRA soldiers.<sup>54</sup>

73. In support of his statements, Applicant a/0122/06 names three other victims of the events and three witnesses ([REDACTED]), all of whom were shot during the attack. Although the applicant claims to have received medical treatment at the [REDACTED] Hospital, he does not submit any documents in support of the injuries he allegedly sustained. The explanation provided by the applicant is that all his medical documents were later stolen from his house in the [REDACTED] IDP Camp.
74. The alleged events appear to fall within the jurisdiction of the Court, as follows: *ratione temporis*, since they occurred after the entry into force of the Statute and its ratification by Uganda; *ratione loci*, since they occurred at [REDACTED] IDP Camp, [REDACTED] District, Uganda;<sup>55</sup> and *ratione materiae*, since the facts alleged may constitute several crimes under the Statute, in particular, under article 7, paragraph 1(a), and/or article 7, paragraph 1(k) and/or article 8, paragraph 2(e)(i), and/or article 8, paragraph 2(e)(v).
75. The incidents related by Applicant a/0122/06 also appear to be included in the warrants of arrest issued in the Case.<sup>56</sup> Accordingly, the Single Judge considers that, for the purposes of this decision, the facts alleged by Applicant a/0122/06 appear to be supported by adequate evidence.
76. The physical injuries alleged by Applicant a/0122/06 might reasonably be the result of being shot at. Accordingly, they appear to constitute physical harm within the meaning of rule 85 of the Rules, as construed by Pre-Trial Chamber I. Applicant a/0122/06 also appears to have suffered economic loss, as all his belongings were burnt, as well as emotional harm due to the loss of his [REDACTED] and [REDACTED].

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<sup>54</sup> ICC-02/04-96-Conf-Exp., p. 10, 11.

<sup>55</sup> Due to the alternative set out in article 12 of the Statute, there is no need for the Single Judge to analyse the requirement of jurisdiction *ratione personae*.

<sup>56</sup> See above, para. 30.

77. In light of the above, the Single Judge is satisfied that Applicant a/0122/06 meets all the requirements of rule 85 of the Rules in respect of the Case and, accordingly, should be granted the status of victim in the Case.

*Applicant a/0123/06 ([REDACTED] IDP Camp)*

78. Application a/0123/06 is submitted by a [REDACTED] man of Ugandan nationality. It is supported by proof of identity consisting in [REDACTED]. This document does not meet the necessary requirements, in particular, since it does not include the date of birth of the holder. In accordance with the principles set forth above, the Single Judge is of the view that, at this stage, the identity of Applicant a/0123/06 as a natural person is not established to a satisfactory degree for the purposes of participation in the proceedings and reserves the right to consider the merits of the application once adequate proof of identity is submitted.

*Applicant a/0124/06 ([REDACTED] IDP Camp)*

79. Application a/0124/06 is submitted by a [REDACTED] woman of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, the Single Judge is of the view that, at this stage, the identity of Applicant a/0124/06 as a natural person is not established to a satisfactory degree for the purposes of participation in the proceedings and reserves the right to consider the merits of the application once adequate proof of identity is submitted.

*Appointment of legal representative(s) for victims allowed to participate in the Case*

80. The decision to give Applicants a/0090/06, a/0098/06, a/0112/06, a/0118/06, a/0119/06, a/0122/06 the right to participate in the proceedings marks a significant threshold as regards the role that they may be called upon to play therein. The Single Judge is of the view that the appointment of a legal representative at this stage, albeit not compulsory, might nevertheless be appropriate, as it will prevent any adverse impact on the expeditiousness of the proceedings. Since all the

victims so far allowed to participate in the proceedings claim to be victims of the same attack, the appointment of a common legal representative acting on behalf of all of them appears also appropriate, with a view to ensuring the effectiveness of the proceedings pursuant to rule 90, paragraph 2 of the Rules.

81. As regards those applicants for whom a decision has been deferred due to deficiencies in the proof of their identity (including the need for the Single Judge to be apprised of the type of documents that may be issued to children under the Ugandan legal and administrative system), the Single Judge would instruct the VPRS to contact them and make them aware of the need to submit proper proof of identity.

*Specific rights and prerogatives of victims in the context of a situation*

82. Applicants a/0064/06; a/0065/06; a/0066/06; a/0067/06; a/0068/06; a/0069/06; a/0070/06; a/0082/06; a/0083/06; a/0084/06; a/0085/06; a/0086/06; a/0087/06; a/0088/06; a/0089/06; a/0091/06; a/0092/06; a/0093/06; a/0096/06; a/0099/06; a/0101/06; a/0102/06; a/0104/06; a/0114/06; a/0115/06; a/0125/06; a/0126/06 and a/0127/06 all claim to have suffered from events which fall beyond the scope of the Case. This applies also to Applicant a/0119/06 who has been recognised as a victim of the Case (see para. 68 above) and to Applicants a/0117/06, a/0120/06, and a/0123/06, whose status as victims in the Case will be decided once adequate proof of identity is submitted (see paras. 54, 69 and 78 above).
83. As recalled earlier, Pre-Trial Chamber I, on the basis of textual, contextual and teleological arguments, adopted a broad approach. Not only did it hold that the Statute vested victims with participation rights including at the stage of investigation, it also held that such participation rights went beyond the stage of the investigation of a case and encompassed "*the stage of the investigation of a situation*".<sup>57</sup> The only requirement for such participation rights to be granted would be that applicant victims claim to have suffered harm as a consequence of

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<sup>57</sup> "Situations, which are generally defined in terms of temporal, territorial and in some cases personal parameters... entail the proceedings envisaged in the Statute to determine whether a particular situation should give rise to a criminal investigation": ICC-01/04-101-tEN-Corr, paras. 65 and 66.

events allegedly qualifying as crimes within the jurisdiction of the Court that, while encompassed in the scope of the situation, are not, or are yet to be, the subject matter of a case.

84. Pre-Trial Chamber I considered that the personal interests of victims were affected *"in general"* at the investigation stage of a situation, since their participation at that stage could serve *"to clarify the facts, to punish the perpetrators of crimes and to request reparations for the harm suffered"*.<sup>58</sup> It stated that participative rights at that stage would include the right *"to present their views and concerns and to file material pertaining to the ongoing investigation"*.<sup>59</sup> The Chamber further stated that it would decide whether applicants being granted the status of victims in a situation would be entitled to participate in proceedings initiated by the Chamber under article 56, paragraph 3, or article 57, paragraph 3(c),<sup>60</sup> or by the Prosecutor and the Defence.<sup>61</sup> Finally, victims of the situation would also be entitled to request the Pre-Trial Chamber *"to order specific proceedings"*, on which requests the Chamber would rule *"on a case-by-case basis"* after assessing their impact on the personal interests of the applicants.<sup>62</sup>
85. As regards the procedural activities which such victims would be allowed to perform specifically in connection with the investigation into the situation of the Democratic Republic of the Congo, Pre-Trial Chamber I decided that they would include (i) presenting their views and concerns; (ii) filing documents and (iii) requesting the Pre-Trial Chamber to order specific measures.<sup>63</sup>
86. The Prosecutor is opposed to the approach adopted by Pre-Trial Chamber I. While agreeing with the Chamber's definition of a situation, the Prosecutor is of the view that the participation of victims at such stage should not be granted, since *"no broad right to participate in a situation can be found in the texts which govern the*

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<sup>58</sup> ICC-01/04-101-tEN-Corr, para. 63.

<sup>59</sup> ICC-01/04-101-tEN-Corr, para. 72.

<sup>60</sup> ICC-01/04-101-tEN-Corr, para. 73.

<sup>61</sup> ICC-01/04-101-tEN-Corr, para. 74.

<sup>62</sup> ICC-01/04-101-tEN-Corr, para. 75.

<sup>63</sup> ICC-01/04-101-tEN-Corr, p. 42.

*Court*".<sup>64</sup> For the Prosecutor, the legal framework established by the Statute and the Rules provides victims with a general right to participate in proceedings "*only once an arrest warrant or a summons to appear has been issued and there is a case presented by the Prosecution before a Pre-Trial Chamber*".<sup>65</sup>

87. The Prosecutor further warns against practical consequences of the approach set out by Pre-Trial Chamber I. In its view, participation by victims of a situation could significantly affect the expeditious conduct of the proceedings and jeopardise the Court's ability to protect the victims and witnesses, as the number of people who apply for participation and seek such protection would increase exponentially. The Prosecutor considers, therefore, that the best way to ensure an efficient and meaningful exercise of victims' rights is "*the strict application of the regime adopted by the Statute and the Rules*", without "*stretch[ing] the bounds of Article 68 (3) well beyond what was intended by the drafters*".<sup>66</sup>
88. It is the view of the Single Judge that specifying the nature and scope of the proceedings in which victims may participate in the context of a situation, prior to, and/or irrespective of, a case, is critical to ensuring the predictability of proceedings and ultimately the certainty and effectiveness of victims' participation.<sup>67</sup> However, it has to be underscored that the list of proceedings provided herein does not intend to be necessarily exhaustive. All possible scenarios cannot be foreseen at this stage, and the Chamber may still decide to allow victims to participate in other proceedings, provided that their participation is appropriate and consistent with the relevant provisions of the Statute and the Rules.
89. In the opinion of the Single Judge, there is also a need to indicate how the "*personal interests*" of the victims could be affected in relation to proceedings in which they

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<sup>64</sup> ICC-02/04-85, para. 20.

<sup>65</sup> ICC-02/04-85, para. 21.

<sup>66</sup> ICC-02/04-85, para. 40.

<sup>67</sup> The right of victims to effective access to justice is reaffirmed in article 11 (a) of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted by the General Assembly of the United Nations on 21 March 2006 (U.N. Doc. A/Res./60/147).

may participate, despite the fact that no case involving these victims is (as yet) under judicial scrutiny. As recalled above, article 68, paragraph 3 of the Statute makes it clear that the Court's discretion in determining the appropriateness of a victim's participation has to be exercised against the criterion of the existence of an impact on the personal interests of the applicant. With regard to each of the victims involved, this determination will then depend not only upon the nature and scope of the proceeding, but also upon the personal circumstances of the victim in question.<sup>68</sup>

### *The role of victims under article 15*

90. The very first scenario envisaged by the Statute wherein victims are called upon to play a role is indeed meant to take place prior to a situation, let alone a case, being brought before the Court: such a scenario is the procedure for the authorisation of an investigation *proprio motu* by the Prosecutor. Article 15, paragraph 3, provides that "victims" may make representations to the Pre-Trial Chamber when the Prosecutor concludes that there is a reasonable basis to proceed with an investigation and, accordingly, submits to the Pre-Trial Chamber a request for authorisation of such an investigation in the absence of referral by a State or the Security Council. In this scenario, the "personal interests" of the alleged victim (or victims) may be affected since victims' representations to the Pre-Trial Chamber can provide factual and legal elements for the decision to authorise the investigation into the situation within which the same victims claim to have suffered harm as a result of the commission of crimes within the jurisdiction of the Court.
91. Rule 50, sub-rule 1 of the Rules clarifies who these "victims" may be. It specifies that, prior to submitting a request to the relevant Pre-Trial Chamber, the Prosecutor "*shall inform victims, known to him or her or to the Victims and Witnesses Unit, or their legal representatives, unless the Prosecutor decides that doing so would pose a danger to the integrity of the investigation or the life or well-being of victims*

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<sup>68</sup> See also para. 103 of this decision.

and witnesses".<sup>69</sup> Pursuant to rule 50, sub-rule 3 of the Rules, victims who have been given this information "*may make representations in writing to the Pre-Trial Chamber*" within 30 days of receiving such information (regulation 50, sub-regulation 1 of the Regulations).

92. In light of the above, the following two conclusions can be drawn: (i) victims, as well as any other subject, may contact the Court (in particular, the Office of the Prosecutor), prior to and irrespective of whether a situation or a case is pending before it, with a view to triggering the exercise of the Prosecutor's *proprio motu* powers; (ii) in the event that the Prosecutor considers it appropriate to exercise such powers, victims may be involved in the proceedings under article 15, provided only that they be known to the Court (either the Prosecutor or the Victims and Witnesses Unit). Accordingly, it appears that such victims are likely to play a significant role in the procedure leading to the Pre-Trial Chamber's decision as to whether the Prosecutor should be authorised to exercise his *proprio motu* powers.

*The concept of victims "having communicated with the Court"*

93. Article 15 of the Statute is therefore the first instance in which the texts governing the Court vest victims with procedural rights outside of the context of a case. In the process of identifying other instances, the Single Judge considers it appropriate to start by focusing attention on a number of provisions in the Rules which refer to the concept of "*victims having communicated with the Court*": namely, victims that, whilst not having (as yet) been allowed to participate in proceedings, have nevertheless been in contact with the Court. In particular, rule 59 (*Participation in proceedings under article 19, paragraph 3*), sub-rule 1(b), requires the Registrar to provide information regarding any question or challenge having arisen under article 19 to "*the victims who have already communicated with the Court in relation to that case or their legal representatives*"; rule 92 (*Notification to victims and*

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<sup>69</sup> Such information may also occur "by general means", addressed to group of victims, provided this will not endanger the integrity and effective conduct of the investigation or the security or well-being of victims and witnesses.

*their legal representatives*), sub-rule 2, deals with the Court's obligation to notify the Prosecutor's decision not to initiate an investigation or not to prosecute pursuant to article 53 to "*victims or their legal representatives who have already participated in the proceedings or, as far as possible ... those who have communicated with the Court in respect of the situation or case in question*"; rule 92, sub-rule 3, provides that the Court's decision to hold a hearing to confirm the charges pursuant to article 61 shall be notified to "*victims or their legal representatives who have already participated in the proceedings or, as far as possible ... those who have communicated with the Court in respect of the case in question*"; rule 119 (Conditional release), sub-rule 3, requires the Pre-Trial Chamber to seek the views *inter alia* of "*victims that have communicated with the Court*" in the relevant case prior to imposing or amending any conditions restricting the liberty of an arrested person. It seems beyond controversy that for the purposes of all of these provisions, victims who have applied to participate in the Court's proceedings by submitting the relevant form duly registered in the file by the relevant sections of the Registry qualify as "*victims having communicated with the Court*".

94. In the view of the Single Judge, at least three meaningful elements can be inferred from these rules. Firstly, in respect of crucial stages such as challenges to the jurisdiction or the admissibility of a case, the confirmation of the charges, conditional release and proceedings under article 53, a decision pursuant to rule 89 of the Rules and ensuing participation is not a pre-condition for victims being granted a procedural right as significant as notification, a right to be formally informed of procedural developments which is typically granted to individuals or entities entitled to some role in the proceedings. Secondly, "*victims having communicated with the Court*" are mentioned in rule 92, sub-rules 2 and 3 as a separate and additional group of victims besides those who "*have already participated in the proceedings*". Thirdly, and most significantly, only rule 92, sub-rule 2 refers to communication by victims with the Court having occurred "*in respect of the situation or case*", while the remaining provisions only refer to

victims having communicated with the Court *in respect of a case*. Accordingly, the Single Judge will focus on this latter provision.

95. Rule 92, sub-rule 2, lists three separate categories of victims who are entitled to be notified by the Court concerning "*the decision of the Prosecutor not to initiate an investigation or not to prosecute pursuant to article 53*": (i) victims who have already participated in the proceedings (or their legal representatives); (ii) victims who have communicated with the Court in respect of the relevant situation; and (iii) victims who have communicated with the Court in respect of the relevant case. As already said, there is no mention of "victims who have communicated with the Court in respect of the relevant situation" in other provisions. Accordingly, a logical interpretation of rule 92, sub-rule 2 leads to the conclusion that victims in the context of a situation may be entitled to play a specific role in proceedings under article 53. In the view of the Single Judge, this would apply to all victims whose status in that context has been recognised by a Chamber either prior to or during such proceedings. It seems equally reasonable to hold that "*views and concerns*" which may be submitted by such victims relate not only to the review procedures triggered by the referring State or the Security Council having referred the situation (article 53, paragraph 3 (a) of the Statute), but also to the exercise of the *proprio motu* review powers vested in the Pre-Trial Chamber under article 53, paragraph 3 (b). Article 53 seems therefore to provide the most significant scenario in which victims may be called upon to play a role, and possibly an influential one, outside the context of a case. This is in light of the concrete possibility that their personal interests would be affected by the decisions of the Prosecutor referred to in that article.

*The role of victims in other proceedings which may be initiated by a Pre-Trial Chamber in the context of a situation*

96. As recalled above, Pre-Trial Chamber I held that it would rule "*on a case-by-case basis*" on whether and in what form victims of the situation would be entitled to participate in proceedings initiated by the Chamber under article 56, paragraph 3

and article 57, paragraph 3(c),<sup>70</sup> by the Prosecutor and the Defence,<sup>71</sup> or “to order specific proceedings”.<sup>72</sup> In accordance with the objective of providing as specific and detailed a view of the procedural rights afforded to applicant victims at the situation stage as possible, and for the sake of the predictability of proceedings, the Single Judge will further focus on the role which might be assigned to victims in the context of proceedings under article 56 and article 57, paragraph 3(c).

97. Article 57, paragraph 3(c) empowers the Pre-Trial Chamber to provide “*where necessary... for the protection and privacy of victims and witnesses, the preservation of evidence, the protection of persons who have been arrested or appeared in response to a summons, and the protection of national security information*”. The only functions which may affect the “personal interests” of victims and may be exercised prior to and irrespective of the triggering of a case seem to pertain to the protection and privacy of victims themselves and possibly the preservation of evidence. The issue of the protection of persons who have been arrested or have appeared in response to a summons can only arise in the context of a case, whereas the protection of national security information evokes a scenario wherein the sensitive interests of a State, as opposed to those of victims, are primarily at stake and which, accordingly, falls under the comprehensive regime set out in article 72 of the Statute.

***The participation of victims and the adoption of protective measures***

98. That the “personal interests” of victims may be affected by the adoption of, or the failure to adopt, measures bearing upon their security and privacy appears hardly debatable.<sup>73</sup> Accordingly, it would be consistent with article 68, paragraph 3, and therefore appropriate for victims (specifically those victims who may be affected by the measures in question) to be authorised to present their “views and

<sup>70</sup> ICC-01/04-101-tEN-Corr, para. 73.

<sup>71</sup> ICC-01/04-101-tEN-Corr, para. 74.

<sup>72</sup> ICC-01/04-101-tEN-Corr, para. 75.

<sup>73</sup> “Clear examples of where the personal interest of victims are affected are when their protection is in issue...”: ICC-01/04-01/06-925, “Decision of the Appeals Chamber on the Joint Application of Victims a/0001/06 to a/0003/06 and a/0105/06 concerning the ‘Directions and Decision of the Appeals Chamber’ of 2 February 2007”, para. 28.

concerns” for these purposes even prior to and irrespective of their being granted victim status in a given case. In particular, participation within this context may take the form of authorisation to provide their point of view whenever the Pre-Trial Chamber considers the adoption of protective measures on its own and considers it appropriate that victims potentially affected by such measures should submit their views. Moreover, since failure to adopt protective measures may affect the victims’ fundamental interest in the protection of their security, it is the view of the Single Judge that victims in the context of a situation should be allowed to submit requests aimed at obtaining the adoption of such measures by the Pre-Trial Chamber.

99. In this latter respect, it is worth noting that, in some specific contexts, victims applying for participation may submit their views and concerns on the protective measures to be taken by the Chamber even prior to the consideration of the merits of their application. Applicant victims are in fact allowed to present concerns relating to their security under rule 89, sub-rule 1 of the Rules, which makes transmission to the Prosecutor and the Defence of the victims’ applications for participation subject to article 68, paragraph 1, of the Statute, i.e. to the adoption of appropriate protective measures. As pointed out in the 1 February 2007 Decision, this seems to be a preliminary step, without prejudice to the Chamber’s decision as to whether the applicants (whose status as victims has yet to be assessed and determined by the Chamber) actually meet the substantive requirements of rule 85 of the Rules. At the same time, rule 89, sub-rule 1, of the Rules is indicative of a more general intent in the statutory texts<sup>74</sup> to grant victims, in the field of protection of their security and safety, a power of initiative which is considered instrumental to effectively implementing such protection.

*The participation of victims and the adoption of measures for the preservation of evidence*

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<sup>74</sup> See also rules 87 and 88 of the Rules.

100. A further function of the Pre-Trial Chamber which might have a bearing on victims' "personal interests" seems to be that related to the preservation of evidence. The risk that evidence might disappear, be destroyed or otherwise deteriorate, and therefore cease to be available or useful within the context of the investigation and prosecution of the relevant crimes represents a major threat to the efficiency of proceedings. The Statute addresses this risk, in particular by providing for a procedure aimed at preserving a "*unique investigative opportunity*" under article 56, which may be triggered by a request from the Prosecutor or at the initiative of the Pre-Trial Chamber. This provision appears to focus on a scenario in which the case stage has already been reached, as evidenced in particular by the reference to the Prosecutor's obligation to provide relevant information to "*the person who has been arrested or has appeared in response to a summons*" in connection with the relevant investigation (article 56, paragraph 1 (c)). However, the possibility that in special circumstances article 56 may also be applied prior to the case stage, as recognised by the jurisprudence of Pre-Trial Chamber I, cannot be discounted,<sup>75</sup> and that participation of victims in the context of the procedure set out in the said article during the investigation of a situation may therefore be permitted.
101. Moreover, a further element seems worth highlighting with regard to the functions and powers of the Pre-Trial Chamber relating to the preservation of evidence, as set out in general terms in article 57, paragraph 3 (c). Assuming that a Pre-Trial Chamber is confronted with an issue of preservation of evidence prior to the case stage, when it would still be unknown whether the evidence to be preserved refers to an incident which will be the subject of a warrant of arrest or a summons to appear, a decision by this Chamber to exercise its powers under article 57, paragraph 3 (c) may well be instrumental to that Chamber's review of a decision by the Prosecutor not to investigate or prosecute a course of conduct under article 53. Accordingly, "views and concerns" by relevant victims could also be submitted in the context of such proceedings.

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<sup>75</sup> ICC-01/04-21, "*Decision on the Prosecutor's Request for Measures under Article 56*".

*Seeking the views of victims*

102. Participation of victims during the investigation of a situation may also stem from the application of rule 93 of the Rules, which empowers a Chamber to “*seek the views of victims or their legal representatives participating pursuant to rules 89 to 91 on any issue*” and to “*seek the views of other victims, as appropriate*”. In light of the broad wording of this provision, any victim may be invited by the Chamber to express his or her views on one or more issues at any stage of the proceedings (including the stage of the investigation of a situation) provided that the Chamber considers it appropriate.

*The exercise of the rights of victims in the context of a situation*

103. In view of the above (and apart from the procedure provided for in article 15 of the Statute), proceedings under article 53 of the Statute appear to be the most significant context in which victims of incidents which do not or are yet to constitute the subject of a case, are vested with autonomous procedural rights. In addition, the same victims may play a role in respect of the protection of victims’ security and privacy, or the preservation of evidence under article 57, paragraph 3 (c) and article 56. In order to allow participation, the Chamber will have to assess, in accordance with article 68, paragraph 3, of the Statute, whether the personal interests of the victims are actually affected in relation to the proceeding concerned, and to the personal circumstances of the victims in question. Moreover, pursuant to the same provision, the Chamber “*shall permit their views and concerns to be presented and considered at stages of the proceeding determined to be appropriate*”, and “*in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial*”.
104. The Single Judge would also point out that, consistently with the practice followed by Pre-Trial Chamber I,<sup>76</sup> all applications will come under judicial scrutiny any time a new case ensues from the investigation of the Situation, with a view to determining whether one or more applicants qualify as victims of such a case

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<sup>76</sup> ICC-01/04-101-tEN-Corr, para. 67.

under rule 85 of the Rules, without any need for the applicants to submit a separate additional application to that effect.

*Analysis of the Applications relating to the Situation*

105. Thirty two applications refer to incidents that are not included in the warrants of arrest issued in the Case. Since all of the applicants are natural persons, rule 85 (a) of the Rules is the relevant provision against which the merits of each of these applications must be assessed. In accordance with this provision, and as it was done for the victims of the Case, the Single Judge will undertake the assessment by determining whether the identity of the applicant as a natural person appears duly established; whether the events alleged by each applicant constitute a crime within the jurisdiction of the Court; whether the applicant claims to have suffered harm; and, most crucially, whether such harm appears to have arisen "as a result" of the event constituting a crime within the jurisdiction of the Court.
106. The Single Judge recalls what has already been stated in this decision with regard to the method of examination and the required standard of proof applicable to the assessment of the factors identified as relevant for the definition of victims under rule 85 of the Rules.<sup>77</sup> At the same time, the Single Judge wishes to point out that, with respect to incidents that are not included in the warrants of arrest issued in the Case, the Chamber has to be satisfied that the applicants have suffered harm "as a result of a crime within the jurisdiction of the Court, such crime having allegedly been committed within the temporal and territorial limits of the relevant situation".<sup>78</sup> Accordingly, the statements made by the applicants in support of their claim need to be corroborated by sufficient information from other sources (particularly, but not exclusively, U.N. and NGO reports), confirming at least to a high degree of probability the occurrence of the incidents related by the applicants, both in temporal and territorial terms. In the absence of such information, the Single Judge would request the VPRS to submit, within a particular period of time, an additional report containing any other elements that

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<sup>77</sup> See paras. 13-16 above.

<sup>78</sup>ICC-01/04-101-tEN-Corr, para. 100.

could corroborate the statement of the victim concerned. This, in order to avoid any differential treatment between applicants based on temporary lack of adequate supporting material, as well as guarantee certainty in the reviewing of the applications. A decision on the merits of the relevant application will be made upon receipt of the report.

107. With regard to proof of the existence and identity of the applicants, an overview of the applications shows that three applicants submit a "voting card" as document proving their identity. As explained previously (see para. 17 above), this type of document meets the necessary requirements and the Single Judge considers that it constitutes adequate proof of the existence and identity of the relevant applicant, provided only that there is consistency between the information contained in the card and the information submitted in the application.
108. As "proof of identity", some applications provide a [REDACTED] card, a certificate issued by [REDACTED], an [REDACTED] issued by [REDACTED], or a statement by an individual belonging to a local authority declaring that a given applicant "is a victim" of a specific incident. The Single Judge has already made clear that such documents fall short of the threshold for accepting documents as proof of identity and cannot be taken into account for participation purposes (see paras. 18 and 19 above).
109. Other applications provide a certificate ("Reunion Letter") issued by a local authority, stating that the applicant had been abducted for a certain period of time. Since the date of birth of the holder does not appear on such a certificate, the Single Judge takes the view that this kind of document falls short of the requirements for accepting documents as proof of identity (see para. 16 above) and therefore does not constitute adequate proof of the existence and identity of the applicant.
110. A certificate of amnesty is attached to a number of applications. Since the date of birth of the holder does not appear on such a certificate, it cannot be considered

sufficient for participation purposes according to the criteria for assessing the proof of identity (see para. 16 above).

111. "Certificates of registration" issued by [REDACTED] and a "certificate of citizenship" are also submitted as proof of identity. Because a certificate of registration does not include a photograph of the holder while a certificate of citizenship does not indicate the date of birth of the holder, they cannot be considered sufficient for participation purposes.
112. As regards applications submitted on behalf of a child (i.e., an individual under 18 years of age), the Single Judge recalls that he reserves the right to decide upon the merits of those applications upon receipt of a report from VPRS on identity documents available under the Ugandan legal and administrative system, as required in para. 20 above.
113. In accordance with these principles, the decision on applications found to be deficient for lack of adequate proof of identity of the applicant will be deferred until adequate proof of identity is submitted or a report by VPRS is made available to the Single Judge.

*Applicant a/0064/06*

114. Application a/0064/06 is submitted by a [REDACTED] man of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In light of the age of the applicant, a decision on the merits of the application cannot be made until the Single Judge receives the VPRS report mentioned above.

*Applicant a/0065/06*

115. Application a/0065/06 is submitted by an [REDACTED] man of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, such a document does not meet the necessary requirements. Therefore, the Single Judge is of the view that, at this stage, the identity of Applicant a/0065/06 as a natural person is not established to a satisfactory degree for the purposes of participation in the proceedings and

reserves the right to consider the merits of the application once adequate proof of identity is submitted.

***Applicant a/0066/06***

116. Application a/0066/06 is submitted by a [REDACTED] man of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, such a document does not meet the necessary requirements. Therefore, the Single Judge is of the view that, at this stage, the identity of Applicant a/0066/06 as a natural person is not established to a satisfactory degree for the purposes of participation in the proceedings and reserves the right to consider the merits of the application once adequate proof of identity is submitted.

***Applicant a/0067/06***

117. Application a/0067/06 is submitted by a [REDACTED] man of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, these documents do not meet the necessary requirements. Therefore, the Single Judge is of the view that, at this stage, the identity of Applicant a/0067/06 as a natural person is not established to a satisfactory degree for the purposes of participation in the proceedings and reserves the right to consider the merits of the application once adequate proof of identity is submitted.

***Applicant a/0068/06***

118. Application a/0068/06 is submitted by a [REDACTED] man of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, these documents do not meet the necessary requirements. Therefore, the Single Judge is of the view that, at this stage, the identity of Applicant a/0068/06 as a natural person is not established to a satisfactory degree for the purposes of participation in the proceedings and

reserves the right to consider the merits of the application once adequate proof of identity is submitted.

***Applicant a/0069/06***

119. Application a/0069/06 is submitted by a [REDACTED] man of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, such a document does not meet the necessary requirements. Therefore, the Single Judge is of the view that, at this stage, the identity of Applicant a/0069/06 as a natural person is not established to a satisfactory degree for the purposes of participation in the proceedings and reserves the right to consider the merits of the application once adequate proof of identity is submitted.

***Applicant a/0070/06***

120. Application a/0070/06 is submitted by a [REDACTED] man of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, such a document does not meet the necessary requirements. Therefore, the Single Judge is of the view that, at this stage, the identity of Applicant a/0070/06 as a natural person is not established to a satisfactory degree for the purposes of participation in the proceedings and reserves the right to consider the merits of the application once adequate proof of identity is submitted.

***Applicant a/0082/06***

121. Application a/0082/06 is submitted by a [REDACTED] boy of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, such a [REDACTED] would not meet the necessary requirements. However, in light of the age of the applicant, a decision on the merits of the application cannot be made until the Single Judge receives the VPRS report mentioned above.

***Applicant a/0083/06***

122. Application a/0083/06 is submitted by a [REDACTED] man of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. Accordingly, the Single Judge is satisfied that the existence and the identity of Applicant a/0083/06 as a natural person are duly established.
123. Applicant a/0083/06 is a member of the [REDACTED] tribe. He currently lives in [REDACTED]. He alleges that on [REDACTED] 2003, he was attacked by a group of LRA fighters at his home in [REDACTED] Uganda, as he was sleeping. The LRA rebels asked him about the UPDF and his friends in the village. When he answered that he did not know, he was "beaten seriously". He was then hit by a panga on [REDACTED] and "left with a cut which started bleeding seriously". The rebels set his house on fire and forced him to move with them towards [REDACTED]. They threatened to kill him, because he was too weak to walk. When they reached a village in [REDACTED], he was released by the rebels who said that he was too [REDACTED] to be recruited as a soldier. He was ordered, together with a resident of [REDACTED], to go back to his home and to warn the other residents of the village "to always run before they attack them". As a result of these events, Applicant a/0083/06 claims to have sustained injuries to many parts of his body ([REDACTED]) and to his head due to the beating. He also had to abandon his home land and seek refuge in [REDACTED].
124. In support of his statements, Applicant a/0083/06 names two other victims of the events and four witnesses ([REDACTED]). He does not submit any documents in support of the injuries he allegedly sustained.
125. The alleged events appear to fall within the jurisdiction of the Court. Following the referral of the Situation in Northern Uganda by the Government of Uganda on 16 December 2003,<sup>79</sup> the scope of the Situation was defined as encompassing "*all crimes committed in Northern Uganda in the context of the ongoing conflict involving the LRA*".<sup>80</sup> In February 2004, the Government of Uganda lodged a declaration of acceptance of jurisdiction, extending the exercise of the temporal jurisdiction by

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<sup>79</sup> REDACTED.

<sup>80</sup> REDACTED.

the Court back to 1 July 2002.<sup>81</sup> The Government of Uganda further stated that it did not intend to conduct national proceedings relating to those “*bearing the greatest responsibility for the crimes within the referred situation, particularly the leadership of the LRA*”.<sup>82</sup> The incidents related by Applicant a/0083/06 appear therefore to be included in the Situation as follows: *ratione temporis*, since they occurred after the entry into force of the Statute, as well as the date specified by the Government of Uganda in its declaration of acceptance of jurisdiction; *ratione loci*, since they occurred at [REDACTED], [REDACTED] District, Uganda;<sup>83</sup> and *ratione materiae*, since the facts alleged may constitute several crimes under the Statute, in particular war crimes and crimes against humanity.

126. Many reports point out that children and adults were abducted in Northern Uganda since the beginning of the conflict, and particularly during 2002 and 2003.<sup>84</sup> Several sources indicate that the LRA had been fighting and attacking the population in the northern Ugandan District of [REDACTED] in 2003.<sup>85</sup> However, none of the documents available to the Chamber refers to abductions committed during that period in [REDACTED], or seems otherwise to corroborate the applicant’s allegations to a satisfactory degree. Due to this lack of information, the Single Judge reserves the right to decide upon the merits of application a/0083/06 upon receipt of a report from VPRS as stated in paragraph 106 above.

#### *Applicant a/0084/06*

127. Application a/0084/06 is submitted by a [REDACTED] boy of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. His

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<sup>81</sup> REDACTED.

<sup>82</sup> REDACTED.

<sup>83</sup> Due to the alternative set out in article 12 of the Statute, there is no need for the Single Judge to analyse the requirement of jurisdiction *ratione personae*.

<sup>84</sup> See, in chronological order, Human Rights Watch, “Stolen Children: Abduction and Recruitment in Northern Uganda”, March 2003, Vol. 15, No. 7 (A), p. 2; Report of the Secretary-General on children and armed conflict, UN Doc. A/58/546-S/2003/1053, 10 November 2003, p. 6 and 11; Coalition to Stop the Use of Child Soldiers, “Child Soldiers Global Report 2004 – Uganda”; Human Rights Watch, “Unrooted and Forgotten, Impunity and Human Rights Abuses in Northern Uganda”, September 2005, Vol. 17, No. 12. (A), p. 22-24; Amnesty International, “Uganda : Child ‘Night Commuters’”, 18 November 2005, AFR 59/013/2005.

<sup>85</sup> REDACTED.

brother is acting on his behalf. In accordance with the principles set forth above, these documents would not meet the necessary requirements. However, in light of the age of the applicant, a decision on the merits of the application cannot be made until the Single Judge receives the VPRS report mentioned above.

*Applicant a/0085/06*

128. Application a/0085/06 is submitted by a [REDACTED] woman of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, these documents would not meet the necessary requirements. However, in light of the age of the applicant, a decision on the merits of the application cannot be made until the Single Judge receives the VPRS report mentioned above.

*Applicant a/0086/06*

129. Application a/0086/06 is submitted by a [REDACTED] man of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, such a document would not meet the necessary requirements. However, in light of the age of the Applicant, a decision on the merits of the application cannot be made until the Single Judge receives the VPRS report mentioned above.

*Applicant a/0087/06*

130. Application a/0087/06 is submitted by a [REDACTED] boy of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In light of the age of the applicant, a decision on the merits of the application cannot be made until the Single Judge receives the VPRS report mentioned above.

*Applicant a/0088/06*

131. Application a/0088/06 is submitted by a [REDACTED] man of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, such a document does not meet the necessary requirements. Therefore, the Single Judge is of the view that, at this

stage, the identity of Applicant a/0088/06 as a natural person is not established to a satisfactory degree for the purposes of participation in the proceedings and reserves the right to consider the merits of the application once adequate proof of identity is submitted.

***Applicant a/0089/06***

132. Application a/0089/06 is submitted by a [REDACTED] man of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, such a document does not meet the necessary requirements. Therefore, the Single Judge is of the view that, at this stage, the identity of Applicant a/0089/06 as a natural person is not established to a satisfactory degree for the purposes of participation in the proceedings and reserves his right to consider the merits of the application once adequate proof of identity is submitted.

***Applicant a/0091/06***

133. Application a/0091/06 is submitted by a [REDACTED] man of Ugandan nationality. It is supported by a proof of identity consisting [REDACTED]. In accordance with the principles set forth above, such a document does not meet the necessary requirements. Therefore, the Single Judge is of the view that, at this stage, the identity of Applicant a/0091/06 as a natural person is not established to a satisfactory degree for the purposes of participation in the proceedings and reserves the right to consider the merits of the application once adequate proof of identity is submitted.

***Applicant a/0092/06***

134. Application a/0092/06 is submitted by a [REDACTED] man of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, such a document does not meet the necessary requirements. Therefore, the Single Judge is of the view that, at this stage, the identity of Applicant a/0092/06 as a natural person is not established to a

satisfactory degree for the purposes of participation in the proceedings and reserves the right to consider the merits of the application once adequate proof of identity is submitted.

*Applicant a/0093/06*

135. Application a/0093/06 is submitted by a [REDACTED] woman of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, such a document does not meet the necessary requirements. Therefore, the Single Judge is of the view that, at this stage, the identity of Applicant a/0093/06 as a natural person is not established to a satisfactory degree for the purposes of participation in the proceedings and reserves the right to consider the merits of the application once adequate proof of identity is submitted.

*Applicant a/0096/06*

136. Application a/0096/06 is submitted by a [REDACTED] man of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, such a document does not meet the necessary requirements. Therefore, the Single Judge is of the view that, at this stage, the identity of Applicant a/0096/06 as a natural person is not established to a satisfactory degree for the purposes of participation in the proceedings and reserves the right to consider the merits of the application once adequate proof of identity is submitted.

*Applicant a/0099/06*

137. Application a/0099/06 is submitted by a [REDACTED] man of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, such a document does not meet the necessary requirements. Therefore, the Single Judge is of the view that, at this stage, the identity of Applicant a/0099/06 as a natural person is not established to a satisfactory degree for the purposes of participation in the proceedings and

reserves the right to consider the merits of the application once adequate proof of identity is submitted.

*Applicant a/0101/06*

138. Application a/0101/06 is submitted by a [REDACTED] man of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. Accordingly, the Single Judge is satisfied that the existence and the identity of Applicant a/0101/06 as a natural person are duly established.
139. Applicant a/0101/06 is a member of the [REDACTED] tribe. He currently lives in [REDACTED]. He alleges that on [REDACTED] 2002, he was abducted from his home village in [REDACTED], "by a group of LRA rebels under the command of [REDACTED]", who forced him to move with them to different places: [REDACTED] and a LRA base called [REDACTED] in Southern Sudan, where they stayed in [REDACTED] 2002. They were attacked by the UPDF during their "Operation Iron Fist" and forced to move to another base called [REDACTED] near the city of [REDACTED] where they stayed from [REDACTED] 2002 until [REDACTED] 2003. Another attack by the UPDF and the overcrowding in the LRA camp forced them to go back to Uganda via [REDACTED] in [REDACTED] District, where they were again attacked by UPDF helicopter gunships. They took refuge for a while in [REDACTED], where they were divided into four groups. According to Applicant a/0101/06, he was "still left under the command of [REDACTED]". After they had reached [REDACTED] on [REDACTED] 2003, he took part in the attack on [REDACTED] in [REDACTED] District. After the attack, he decided to escape and ran to the army barracks although he was being chased by other LRA combatants. Bullets were fired by both the LRA and the UPDF. Applicant a/0101/06 finally managed to escape and surrendered to the UPDF in [REDACTED] on [REDACTED] 2003. He was transferred from one barracks to another, and then to [REDACTED]. He states that he was taken back to his home in [REDACTED] on [REDACTED] 2003. As a result of these events, Applicant a/0101/06 claims to have sustained an injury to [REDACTED] "as a result of

serious beating”, and that he was hit by a bullet on [REDACTED], leaving a scar that is still visible. He further alleges that his [REDACTED] were killed and that he lost his education due to the time he spent in captivity and alleges that he was forced to be a soldier for the LRA and to walk long distances without food. He states that he suffered “serious psychological torture”, as he saw people being killed every day, and that he still experiences [REDACTED] pains.

140. In support of his statements, Applicant a/0101/06 names another victim of the events, a friend with whom he was abducted, and a witness, [REDACTED] who “was there” but managed to escape. He does not submit any documents in support of the injuries he allegedly sustained.
141. The alleged events appear to fall within the jurisdiction of the Court. Following the referral of the Situation in Northern Uganda by the Government of Uganda on 16 December 2003,<sup>86</sup> the scope of the Situation was defined as encompassing “*all crimes committed in Northern Uganda in the context of the ongoing conflict involving the LRA*”.<sup>87</sup> In February 2004, the Government of Uganda lodged a declaration of acceptance of jurisdiction, extending the exercise of the temporal jurisdiction by the Court back to 1 July 2002.<sup>88</sup> The Government of Uganda further stated that it did not intend to conduct national proceedings relating to those “*bearing the greatest responsibility for the crimes within the referred situation, particularly the leadership of the LRA*”.<sup>89</sup> The incidents related by Applicant a/0101/06 appear therefore to be included within the Situation as follows: *ratione temporis*, since they occurred after the entry into force of the Statute, as well as the date specified by the Government of Uganda in its declaration of acceptance of jurisdiction; *ratione loci*, since they occurred in different places located in Uganda;<sup>90</sup> and *ratione materiae*, since the facts alleged may constitute several crimes under the Statute, in particular war crimes and crimes against humanity.

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<sup>86</sup> REDACTED.

<sup>87</sup> REDACTED.

<sup>88</sup> REDACTED.

<sup>89</sup> REDACTED.

<sup>90</sup> Due to the alternative set out under in article 12 of the Statute, there is no need for the Single Judge to analyse the requirement of jurisdiction *ratione personae*.

142. Many aspects in the applicant's allegations appear to be corroborated by information from external sources. Between [REDACTED] and [REDACTED] 2002, at least 456 attacks are reported to have occurred in [REDACTED] and [REDACTED] District.<sup>91</sup> On [REDACTED] 2002, the LRA is reported to have attacked a detachment of the UPDF stationed in [REDACTED].<sup>92</sup> This seems to corroborate the presence of the rebels in the area at the date of the abduction. Operation Iron Fist is known to have been launched by the UPDF in Sudan to rout the LRA from their bases, resulting in the LRA returning to Uganda.<sup>93</sup> Accordingly, the Single Judge considers that, for the purposes of the present decision, the facts alleged by Applicant a/0101/06 appear to be supported by sufficient information.
143. Both the physical injuries and the psychological trauma alleged by Applicant a/0101/06 might reasonably be the result of being beaten and/or random shooting, as well as of witnessing events of an exceedingly violent and shocking nature. Accordingly, they appear to constitute physical and emotional harm within the meaning of rule 85 of the Rules, as construed by Pre-Trial Chamber I.
144. In light of the above, the Single Judge is satisfied that Applicant a/0101/06 meets all the requirements of rule 85 of the Rules in respect of the Situation and, accordingly, should be granted the status of victim in the context of the Situation.

*Applicant a/0102/06*

145. Application a/0102/06 is submitted by a [REDACTED] woman of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, such a document does not meet the necessary requirements. Therefore, the Single Judge is of the view that, at this stage, the identity of Applicant a/0102/06 as a natural person is not established to a satisfactory degree for the purposes of participation in the proceedings and

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<sup>91</sup> REDACTED.

<sup>92</sup> REDACTED.

<sup>93</sup> See Human Rights Watch, "Stolen Children: Abduction and Recruitment in Northern Uganda", March 2003, Vol. 15, No. 7 (A), p. 4; Report of the Secretary-General on children and armed conflict, 26 November 2002, UN. Doc. S/2002/1299, para. 46.

reserves the right to consider the merits of the application once adequate proof of identity is submitted.

***Applicant a/0104/06***

146. Application a/0104/06 is submitted by a [REDACTED] boy of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, such a certificate would not meet the necessary requirements. However, in light of the age of the applicant, a decision on the merits of the application cannot be made until the Single Judge receives the VPRS report mentioned above.

***Applicant a/0114/06***

147. Application a/0114/06 is submitted by a [REDACTED] man of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, such a document does not meet the necessary requirements. Therefore, the Single Judge is of the view that, at this stage, the identity of Applicant a/0114/06 as a natural person is not established to a satisfactory degree for the purposes of participation in the proceedings and reserves the right to consider the merits of the application once adequate proof of identity is submitted.

***Applicant a/0115/06***

148. Application a/0115/06 is submitted by a [REDACTED] man of Ugandan nationality. It is supported by proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, such a document does not meet the necessary requirements. Therefore, the Single Judge is of the view that, at this stage, the identity of Applicant a/0115/06 as a natural person is not established to a satisfactory degree for the purposes of participation in the proceedings and reserves the right to consider the merits of the application once adequate proof of identity is submitted.

***Applicant a/0117/06***

149. Application a/0117/06 is submitted by an [REDACTED] man of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, such a document does not meet the necessary requirements. Therefore, the Single Judge is of the view that, at this stage, the identity of Applicant a/0117/06 as a natural person is not established to a satisfactory degree for the purposes of participation in the proceedings and reserves the right to consider the merits of the application once adequate proof of identity is submitted.<sup>94</sup>

*Applicant 0/0119/06*

150. Application a/0119/06 is submitted by a [REDACTED] man of Ugandan nationality. It is supported by proof of identity consisting in [REDACTED]. Accordingly, the Single Judge is satisfied that the existence and the identity of Applicant a/0119/06 as a natural person are duly established.<sup>95</sup>
151. Applicant a/0119/06 is a member of the [REDACTED] tribe. He currently lives in [REDACTED]. Among other allegations that appear to be encompassed in the scope of the Case, he relates how, on [REDACTED] 2003, at around [REDACTED], he was captured by the LRA at his home in [REDACTED], after having been hit with a hoe on his left thigh and "left very weak". [REDACTED] was hit on the [REDACTED], the [REDACTED] and the [REDACTED] with a hoe and then "tortured seriously by beating" while he was lying on the ground. He was then forced to follow the LRA group to "[REDACTED]", in [REDACTED] Sub-County, and then to "[REDACTED]" in [REDACTED] District, where he was trained and recruited into the LRA. He participated in several attacks, although he had no gun. The group went to [REDACTED] in [REDACTED] District; on the way, he was forced to beat people who were newly abducted and received [REDACTED] if he did not do it properly. Frequent attacks by the UPDF made them move and settle at the [REDACTED] River for approximately two months. After that, they returned to [REDACTED] Sub-Region, via [REDACTED] to "[REDACTED]" in

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<sup>94</sup> See also para. 54 above.

<sup>95</sup> See also para. 62 above.

[REDACTED] District, where they did “a lot of abductions and killing...due to the command of [REDACTED]” and “kept on training” some of the abducted people. They kept on rotating in [REDACTED] District for a period of two months and attacked the [REDACTED], where they “looted lots of items, captured a policeman” and fought against the UPDF. After having been “called by [REDACTED] to meet him at [REDACTED]”, he was left under the command of [REDACTED] and slept one night at [REDACTED]. The next morning, on [REDACTED] 2003, they were attacked by the UPDF and [REDACTED] of them, including Applicant 0/0119/06, managed to escape. He reported to the UPDF barracks in [REDACTED] and was then brought to [REDACTED] in [REDACTED] town. As a result of these events, Applicant 0/0119/06 claims to suffer from [REDACTED] pains “due to torture and the heavy luggage” that he was forced to carry. He also alleges having been [REDACTED] by [REDACTED], since he was away for a long time.

152. In support of his statements, he names three individuals with whom he claims to have been “captured from the same village”, including [REDACTED] and [REDACTED]. Applicant a/0119/06 does not submit any document in support of the injuries he allegedly sustained.
153. The alleged events appear to fall within the jurisdiction of the Court. Following the referral of the Situation in Northern Uganda by the Government of Uganda on 16 December 2003,<sup>96</sup> the scope of the Situation was defined as encompassing “*all crimes committed in Northern Uganda in the context of the ongoing conflict involving the LRA*”<sup>97</sup>. In February 2004, the Government of Uganda lodged a declaration of acceptance of jurisdiction, extending the exercise of the temporal jurisdiction by the Court back to 1 July 2002.<sup>98</sup> The Government of Uganda further stated that it did not intend to conduct national proceedings relating to those “*bearing the greatest responsibility for the crimes within the referred situation, particularly the*

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<sup>96</sup> REDACTED.

<sup>97</sup> REDACTED.

<sup>98</sup> REDACTED.

leadership of the LRA".<sup>99</sup> The incidents related by Applicant a/0119/06 appear therefore to be included within the Situation as follows: *ratione temporis*, since they occurred after the entry into force of the Statute, as well as the date specified by the Government of Uganda in its declaration of acceptance of jurisdiction; *ratione loci*, since they occurred in different places located in Uganda;<sup>100</sup> and *ratione materiae*, since the facts alleged may constitute several crimes under the Statute, in particular war crimes and crimes against humanity.

154. Many aspects in the applicant's allegations appear to be corroborated by information from external sources. According to OCHA (United Nations Office for the Coordination of Humanitarian Affairs), 290 people were abducted by the LRA in the [REDACTED] District in [REDACTED] 2003.<sup>101</sup> In [REDACTED] 2003, the LRA is reported to have launched attacks on the eastern region, hitting [REDACTED] and then [REDACTED] District.<sup>102</sup> Some sources indicate that in [REDACTED] 2003, the UPDF was "struggling to drive them out" of these places, and that within the first week of [REDACTED] 2003, 145 people, mostly [REDACTED], were rescued from the LRA rebels.<sup>103</sup> Moreover, the statements by [REDACTED] and [REDACTED] appear to corroborate the allegations of Applicant a/0119/06, notably regarding the day and place of abduction and the directions taken by the LRA rebels in the aftermath. Accordingly, the Single Judge considers that, for the purposes of the present decision, the facts alleged by Applicant a/0119/06 appear to be supported by sufficient information.
155. The physical injuries alleged by Applicant a/0119/06 might reasonably be the result of a violent beating. Accordingly, they appear to constitute physical harm within the meaning of rule 85 of the Rules, as construed by Pre-Trial Chamber I.

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<sup>99</sup> REDACTED.

<sup>100</sup> Due to the alternative set out in article 12 of the Statute, there is no need for the Single Judge to analyse the requirement of jurisdiction *ratione personae*.

<sup>101</sup> REDACTED.

<sup>102</sup> REDACTED.

<sup>103</sup> REDACTED.

156. In light of the above, the Single Judge is satisfied that Applicant a/0119/06 meets all the requirements of rule 85 of the Rules in respect of the Situation and, accordingly, should be granted the status of victim in the context of the Situation.

*Applicant a/0120/06*

157. Application a/0120/06 is submitted by a [REDACTED] woman of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, the Single Judge is of the view that, at this stage, the identity of Applicant a/0120/06 as a natural person is not established to a satisfactory degree for the purposes of participation in the proceedings and reserves the right to consider the merits of the application once adequate proof of identity is submitted.<sup>104</sup>

*Applicant a/0123/06*

158. Application a/0123/06 is submitted by a [REDACTED] man of Ugandan nationality. It is supported by proof of identity consisting in [REDACTED]. Such a document does not meet the necessary requirements, in particular since it does not include the date of birth of the holder. In accordance with the principles set forth above, the Single Judge is of the view that, at this stage, the identity of Applicant a/0123/06 as a natural person is not established to a satisfactory degree for the purposes of participation in the proceedings and reserves the right to consider the merits of the application once adequate proof of identity is submitted.<sup>105</sup>

*Applicant a/0125/06*

159. Application a/0125/06 is submitted by a [REDACTED] man of Ugandan nationality. It is supported by proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, such a document does not meet the necessary requirements. Therefore, the Single Judge is of the view that, at this stage, the identity of Applicant a/0125/06 as a natural person is not established to a satisfactory degree for the purposes of participation in the proceedings and

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<sup>104</sup> See also para. 69 above.

<sup>105</sup> See also para. 78 above.

reserves the right to consider the merits of the application once adequate proof of identity is submitted.

***Applicant a/0126/06***

160. Application a/0126/06 is submitted by a [REDACTED] woman of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In accordance with the principles set forth above, such a document does not meet the necessary requirements. Therefore, the Single Judge is of the view that, at this stage, the identity of Applicant a/0126/06 as a natural person is not established to a satisfactory degree for the purposes of participation in the proceedings and reserves the right to consider the merits of the application once adequate proof of identity is submitted.

***Applicant a/0127/06***

161. Application a/0127/06 is submitted by a [REDACTED] boy of Ugandan nationality. It is supported by a proof of identity consisting in [REDACTED]. In accordance with the principles set forth regarding proof of identity, such letter would not meet the necessary requirements. However, in light of the age of the applicant, a decision on the merits of the application cannot be made until the Single Judge receives the VPRS report mentioned above.

***Appointment of legal representative(s) for victims having been authorised to participate in the Situation***

162. In light of the fact that Applicants a/0101/06 and a/0119/06 have been recognised as victims in the context of the Situation, it is the view of the Single Judge that the appointment of a legal representative at this stage, albeit not compulsory, might nevertheless be appropriate, as it will prevent an adverse impact on the expeditiousness of the proceedings. Since the statements of these two victims present numerous similarities as regards the type of crimes involved, the appointment of a common legal representative appears also appropriate, with the view of ensuring the effectiveness of the proceedings pursuant to rule 90,

paragraph 2 of the Rules. However, as applicant a/0119/06 has already been recognised as victim in the Case, the Registrar should seek his views to determine whether he should be represented by the legal representative appointed for the victims in the Case or by the legal representative appointed for the victims in the context of the Situation. In this regard, the Single Judge endorses the recommendation by VPRS<sup>106</sup>, in order to provide the victim with one interlocutor only, and secure his uniform representation.

163. As regards those applicants for whom a decision has been deferred due to deficiencies affecting proof of their identity (including the need for the Single Judge to be appraised of the kind of documents available for children under the Ugandan legal and administrative system), the Single Judge, as was done for the victims in the Case, would instruct the VPRS to contact them and make them aware of the need to submit proper proof of identity.

*The role of the Office of Public Counsel for Victims vis-à-vis victims' participation in the Situation*

164. The above list of victims' rights and prerogatives in the context of a situation could remain little more than a theoretical exercise, if not coupled with mechanisms to make victims aware of their existence and of the actual possibility of exercising them. The evaluation of such a possibility is of a strictly legal nature and falls therefore squarely within the mandate of a victim's legal representative. However, in the present scenario, in which a number of applicant victims are not yet assisted by a legal representative, the Single Judge is of the view that it is the task of the OPCV, as the office entrusted with providing applicant victims with any support and assistance which may be appropriate at this stage: i) to inform victims "*having communicated with the Court*" of their rights and prerogatives as outlined in paragraphs 94 and 95 above; ii) in accordance with regulation 81, sub-regulation 4,

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<sup>106</sup> See ICC-02/04-96-Conf-Exp, "Supplementary report to Pre-Trial Chamber II on applications a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06, a/0111/06 to a/127/06, and a/0014/07 to a/0020/07 in accordance with rule 89, paragraph 3 of the Rules of Procedure and Evidence, and regulation 86, paragraph 4 of the Regulations of the Court", p. 20.

of the Regulations, to continue to provide support and assistance to victims, legal representatives for victims and applicant victims within the limits of its mandate,<sup>107</sup> and where necessary upon consultation with the VPRS and the Victims and Witnesses Unit.

**HAVING REGARD THERETO AND FOR THESE REASONS,**

**DECIDE** that Applicants a/0090/06, a/0098/06, a/0112/06, a/0118/06, a/0119/06, a/0122/06 be granted the status of victim in the Case and **REQUEST** the Registrar to assist them in appointing a common legal representative;

**DECIDE** that Applicants a/0101/06 and a/0119/06 be granted the status of victim in the context of the Situation and **REQUEST** the Registrar to assist them in appointing a common legal representative;

**REQUEST** the Registrar to seek the views of applicant a/0119/06 as regards by which legal representative he should be represented;

**REQUEST** the VPRS to contact all the applicants for whom decision has been deferred due to deficiencies affecting proof of their identity, in order to inform them of the need to submit proper proof of identity;

**REQUEST** the VPRS to submit, by 12 October 2007, a report on the identity documents available in the Ugandan legal and administrative system, having special regard to the questions raised in paragraph 20 above;

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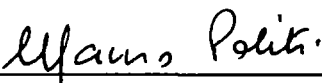
<sup>107</sup> See ICC-02/04-01/05-222, p. 4, 5.

**REQUEST** the VPRS to submit, by 12 October 2007, a report containing any information that could corroborate the statement of Applicant a/0083/06 in accordance with paragraph 106 above.

**DECIDE** that the decision on applications a/0010/06, a/0064/06, a/0065/06, a/0066/06, a/0067/06, a/0068/06, a/0069/06, a/0070/06, a/0081/06, a/0082/06, a/0083/06 a/0084/06, a/0085/06, a/0086/06, a/0087/06, a/0088/06, a/0089/06, a/0091/06, a/0092/06, a/0093/06, a/0094/06, a/0095/06, a/0096/06, a/0097/06, a/0099/06, a/0100/06, a/0102/06, a/0103/06, a/0104/06; a/0111/06, a/0113/06, a/0114/06, a/0115/06, a/0116/06, a/0117/06, a/0120/06, a/0121/06, a/0123/06, a/0124/06, a/0125/06, a/0126/06, a/0127/06 is deferred until adequate proof of identity and/or the relevant report by VPRS is submitted;

**REQUEST** the OPCV to inform victims *"having communicated with the Court"* of their rights and prerogatives as set out in paragraph 94 and 95 above, and to continue to provide support and assistance to victims, legal representatives for victims and applicant victims, in accordance with regulation 81, sub-regulation 4, of the Regulations.

Done in English and French, the English version being authoritative.

  
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**Judge Mauro Politi**  
**Single Judge**

Dated this 10 August 2007

At The Hague, The Netherlands.