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No.: ICC-02/04-01/05
Date: 18 November 2008

PRE-TRIAL CHAMBER II

Before: Judge Mauro Politi, President
Judge Hans-Peter Kaul
Judge Ekaterina Trendafilova

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

Public Document

Amicus Curiae submitted pursuant to the Pre-Trial Chamber II "Decision on application for leave to submit observations under Rule 103" dated 5 November 2008

Source: The Uganda Victims' Foundation and the Redress Trust

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

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Detention Section

**Victims Participation and Reparations
Section**

Other

1. Noting the "Decision initiating proceedings under article 19, requesting observations and appointing counsel for the Defence" of 21 October 2008, whereby the Chamber decided to initiate proceedings under article 19(1) of the ICC Statute and invited the Republic of Uganda, the Prosecutor, the counsel for the Defence and victims having communicated with the Court with respect to the case of *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen* ("the Case"), or their legal representatives, to submit their observations on the admissibility of the Case by 10 November 2008;¹

2. Noting the "Application by the Uganda Victims' Foundation and the Redress Trust for leave to submit observations to the Pre-Trial Chamber II of the International Criminal Court, pursuant to Rule 103 of the Rules of Procedure and Evidence", dated 31 October 2008 and filed on 3 November 2008, whereby the Uganda Victims' Foundation and the Redress Trust ("the Amici") requested leave to submit written observations in the Proceedings;²

3. Noting the "Decision on application for leave to submit observations under Rule 103" dated 5 November 2008 (the Decision),³ by which the Pre-Trial Chamber II granted the Amici's request to file an *Amicus Curiae* in the initiated proceedings under article 19, on three specific issues:

- (i) the state of implementation of the Annexure, with particular reference to the establishment of the Special Division of the High Court;
- (ii) the existence of any relevant legal texts relating to such establishment or to the Annexure;
- (iii) the experiences of victims of crimes within the jurisdiction of the Court in seeking justice from Ugandan courts;

4. The Amici respectfully submit the following observations:

A. Preliminary Observations

5. The Decision of the Chamber granting the Amici leave provides that:

¹ ICC-02-04-01-05-320-ENG.

² ICC-02-04-01-05-330-ENG.

³ ICC-02-04-01-05-333-ENG.

“the Applicants should confine their submissions to points of specific relevance to the issues outlined above, refraining from providing information of a general nature as regards victims' issues and/or analysis of a legal nature”.⁴

6. Consequently, the Amici have refrained from providing legal analysis regarding the test for admissibility under Articles 17 and 19 of the ICC Statute. Any references made by the Amici to legal texts or legal principles relate to the Amici's factual assessment of areas falling within the scope of the issues identified by the Chamber.

7. The Amici do not take or present herein any position on the issues at stake in the present observations. These observations are only intended to inform the Court about matters relevant to the proper determination of the issues before it.

B. The State of Implementation of the Annexure, with Particular Reference to the Establishment of the Special Division of the High Court

8. Given the limitations set out by the Chamber in granting the Amici leave to make observations, the Amici limit their observations to an examination of the state of implementation of the Annexure that relates to the Special Division of the High Court (“Special Division”). These observations do not consider any development that might have occurred regarding traditional justice or other sections of the Annexure.

9. The Annexure was signed by the parties (the Government of Uganda and the Lord's Resistance Army (“LRA”)) on 19 February 2008. The Peace Agreement to which it is annexed has, however, not been signed by the parties. Thus, the Peace Agreement and its Annexure have not as yet been approved by the Parliament.

10. The Annexure sets out, inter alia, under paragraphs 7-9 entitled “Legal and Institutional Framework”:

7. A special division of the High Court of Uganda shall be established to try individuals who are alleged to have committed serious crimes during the conflict.

⁴ ICC-02-04-01-05-333-ENG, para. 14.

8. The special division of the High Court shall have a registry dedicated to the work of the division and in particular, shall make arrangements to facilitate the protection and participation of witnesses, victims, women and children.

9. For the proper functioning of the special division of the court in accordance with the agreed principles of accountability and reconciliation, legislation may provide for:

- (a) The constitution of the court
- (b) The substantive law to be applied
- (c) Appeals against the decision of the court
- (c) Rules of procedure;
- (e) The recognition of traditional and community justice processes in proceedings

11. Paragraphs 10-14 of the Annexure set out what the Government shall establish with regard to investigations and prosecutions and indicate in particular that “the Government shall establish a unit for carrying out investigations and prosecutions in support of trials and other formal proceedings as envisaged by the Principal Agreement”.

Implementation to Date

12. The Amici’s observations on the implementation of the Annexure, below, are based on discussions with officials and members of the international community based in Uganda and members of Ugandan civil society working in areas related to the Special Division’s establishment. It should be noted that no official public documents are available which confirm or contradict the information provided below. To date, the Government of Uganda (“the Government”) has not issued detailed public statements, nor have there been public consultations or formal parliamentary debates on the policies and procedures that underpin the Special Division, nor on any draft law relating to the Special Division. Similarly, at the time of submitting these observations there were no publicly available policy documents, draft strategic plans or budgets relating to the Special Division. The only publicly available document is the Annexure to the Peace Agreement itself.

13. On 27 March 2008, the Government informed the Court that “[t]he establishment of the special division of the High Court [...] shall take place after the signing of the final peace

agreement”⁵. Further, it stated that “the enactment of the relevant legislation shall take place *after the signing of the final peace agreement*. Accordingly, the Government of Uganda is yet to take any steps towards the implementation of the Agreement or the Annexure.”⁶ [emphasis added].

14. Despite the lack of a signed Peace Agreement, according to the Registrar of the Special Division, the Special Division was established pursuant to Article 141 of the Ugandan Constitution which affords the Principal Judge of the High Court the power to create a division within the Court. It was administratively created and thus no publication in the Official Gazette was necessary.⁷

15. On 22 May 2008, the Principal Judge of the High Court, the Honourable Justice James Ogoola, appointed the Honourable Dan Akiiki Kizza to head the Special Division. Two other judges were appointed to the Special Division: the Honourable Justice Eldad Mwangusya and the Honourable Lady Justice Elizabeth Ibanda Nahamya.⁸ His Worship Lawrence Tweyanze is the Registrar.

16. The Judges appointed to the Special Division were already members of the High Court (e.g. the Honourable Justice Akiiki Kizza was in the Civil Division) and were subsequently deployed to the Special Division by the Principal Judge. It is therefore possible that they would be transferred at a later stage to other fields or divisions within the High Court, and that other judges would be brought in to replace them.⁹

17. The Honourable Justice Mwangusya worked for numerous years in the office of the Directorate of Public Prosecutions (DPP) before becoming a Judge. The Honourable Justice

⁵ Letter from the Ugandan Minister of Justice to the Registrar of the ICC, entitled: “Request for Information From the Republic of Uganda on the Status of Execution of the Warrants of Arrest” dated 27 March 2008, ICC-02/04-01/05-286-Anx2, p. 2.

⁶ Ibid.

⁷ Amici’s Interview with Registrar of the Special Division, November 2008.

⁸ “Uganda: Country Sets Up Court to Prosecute LRA Rebels,” The Monitor (Kampala), 25 May 2008, available at <http://allafrica.com/stories/200805260175.html>; “Uganda forms war crime tribunal,” Agence France Presse, 27 May 2008, available at <http://www.thetimes.co.za/News/Article.aspx?id=773836>; “Peace Process, Peace and Reconciliation”, US Embassy in Uganda, May 3-31 2008, available at <http://northernuganda.usvpp.gov/peacerec2.html>; “Uganda sets up war crimes court”, BBC News, available at <http://news.bbc.co.uk/1/hi/world/africa/7420461.stm>.

⁹ Amici’s interviews with the Registrar, a member of the Prosecutor’s office and a State attorney, November 2008.

Nahamya is currently the Principal Defender at the Special Court for Sierra Leone and is scheduled to return to Uganda in December 2008 to take up her functions as Judge. The Honourable Justice Akiiki Kizza served in Sierra Leone for 2 years from 2004 presiding over corruption cases within the Anti Corruption Commission and is an experienced Judge in Uganda.

18. The Honourable Justice Ogoola is involved in ensuring the set up of the Special Division and work is reportedly being undertaken on a draft law.¹⁰ A team from the High Court is reportedly working out the appropriate structures, personnel, and tools that would be required.¹¹

19. Since August 2008,¹² there have been several meetings and workshops involving institutions within the Justice, Law and Order Sector ("JLOS"), during which the set up and operations of the Special Division were discussed.¹³ The JLOS has created a Transitional Justice Working Group which meets regularly. This Working Group has reportedly formed Sub-Committees: on Truth Telling and Reconciliation; Traditional Justice Mechanisms; Budget; Formal Criminal Jurisdiction and Integrated Transitional Systems, which integrates the work of all the sub-committees. The Transitional Justice Working Group includes representatives from the Judiciary, Ministry of Internal Affairs, Uganda Prisons Service, the Uganda Amnesty Commission, the Uganda Human Rights Commission, Uganda Law Reform, First Parliamentary Counsel (Ministry of Justice) and Uganda Police.

20. The Working Group is reportedly considering the need for the enactment of new legislation for the Special Division, both substantive and procedural, and is also said to be visiting other countries such as Sierra Leone, The Netherlands and Rwanda (to study local

¹⁰ On August 11, Uganda's Principal Judge James Ogoola stated that the Special Division cannot start operations before a law outlining its modalities is enacted. The Honourable Justice Ogoola said the law would define what constitute serious war crimes and determine sanctions for those crimes. See: "Peace Process, Peace and Reconciliation", US Embassy in Uganda, August 1-31, available at <http://northernuganda.usvpp.gov/securityupdate.html>; also Justice Ogoola reportedly declared: "We have to come up with a special law which has to be enacted by government to make sure that these prosecutions suit international standards". See: "Uganda: Ogoola Names Judges On Anti-Corruption, War Crimes Court," New Vision, 25 May 2008, available at www.newvision.co.ug/D/8/12/629897.

¹¹ "Peace Process, Peace and Reconciliation", US Embassy in Uganda, May 3-31, available at: <http://northernuganda.usvpp.gov/peacerec2.html>.

¹² "Peace Process, Peace and Reconciliation", US Embassy in Uganda, August 1-31, available at: <http://northernuganda.usvpp.gov/peacerec2.html>.

¹³ The Amici's interview with a member of the Prosecution, November 2008.

systems such as Gacaca), as well as conducting local research.¹⁴ The Working Group is expected to release a report “by November”,¹⁵ after which the Cabinet will consider the way forward and any draft legislation will be presented to Parliament.

21. The Special Division is expected to be funded by the Government of Uganda and foreign donors. Donor funds will be channelled through JLOS. There have been several JLOS meetings to discuss the budget, and it appears that they have prepared a tentative budget and plan for the next 5 years. The budget is said to cover operational funds, construction, capacity building of the personnel for skills development and acquisition, study tours and the making of the appropriate laws. Until the budget is approved, activities of the Special Division are to be funded through the regular budgets of the High Court (and of the DPP for activities relating to investigations and prosecutions).

22. JLOS is reportedly currently looking for temporary premises for the Special Division and associated prosecutors, pending construction of suitable premises for the Special Division scheduled for the next financial year July 2009 - June 2010.¹⁶

23. The Director of Public Prosecutions has created a War Crimes Unit, currently headed by an Officer at the rank of Senior Principal State Attorney. He has reportedly staffed the Unit with six experienced prosecutors from among his existing staff. It is planned that the selected prosecutors will attend relevant short courses, workshops and short attachments to existing tribunals to gain experience. The Director is said to be hoping to include on his staff Ugandan prosecutors currently serving in international criminal tribunals.

C. The Existence of Any Relevant Legal Texts Relating to Such Establishment or to the Annexure

24. There is currently no formal legal text relating to the Special Division. A draft law may be in existence though it is not publicly available, nor accessible to the Amici. There is also no

¹⁴ The Amici’s interview with State attorney, November 2008.

¹⁵ “Peace Process, Peace and Reconciliation”, US Embassy in Uganda, August 1-31, available at: <http://northernuganda.usvpp.gov/peacerec2.html>.

¹⁶ The Amici’s interview with a member of Prosecution, November 2008.

implementing legislation enacted to give effect to the Rome Statute of the International Criminal Court, although a draft is currently before Parliament.¹⁷

25. The following Ugandan laws may be of relevance, however, depending on any specific law that may be adopted on the Special Division which may exempt certain laws from applying to the Special Division.

a) The Amnesty Act¹⁸

26. The Amnesty Act provides for the granting of amnesty to any person who reports to the appropriate government authority, renounces and abandons involvement in the war or armed rebellion, surrenders any weapons and is issued a certificate of amnesty.¹⁹ According to Section 3 (6) of the Amnesty Act, the amnesty “shall be granted” to any “reporter who has complied with any of the provisions of subsections (1), (2), (3), (4) and (5)”. The Minister for Internal Affairs may by statutory instrument declare a person ineligible for an amnesty, according to an amendment to the Amnesty Act dated 24 May 2006. However, there are no known instances in which this has been invoked.

27. The Amnesty Act applies to all persons regardless of the severity of their crimes and their position of authority or responsibility. On 5 August 2008, the Government granted an amnesty to James Obita, the former leader of the LRA negotiating team.²⁰

28. The law was enacted in January 2000²¹ for six months and has been renewed successively since then as allowed by the Act itself. Recently, Justice Peter Onega, Chairman of the Amnesty Commission, further announced the extension of the Amnesty Act for two years.²²

¹⁷ The International Criminal Court Bill, 2006, Bill No 18 2006, Bill Supplement to the Uganda Gazette No 17 Volume XCVIX, available at: http://www.beyondjuba.org/policy_documents/ICC_BILL_No.18.pdf; Draft Report of the Committee on Legal and Parliamentary Affairs on the International Criminal Court Bill, 2004, Kampala, 14th December 2004, available with the Amici; Amnesty International report “Uganda, Concerns about the International Criminal Court, Bill 2004”, AI Index: AFR 59/005/2004, available at www.amnesty.org/en/library/asset/AFR59/005/2004/en/dom-AFR590052004en.pdf; Analysis of the International Criminal Court Bill (No. 10/2004) in the context of Uganda’s obligations under the Statute of the International Criminal Court, Human Rights Network (Uganda) (HURINET (U)), January 17, 2005, available with the Amici. These sources relate to the 2003 Bill not the 2006 Bill although the critiques are the same.

¹⁸ Amnesty Act, Chapter 294, p. 6337, 21 January 2000.

¹⁹ Amnesty Act, Article 3 (1).

²⁰ “Peace Process, Peace and Reconciliation”, US Embassy in Uganda, August 1-31, available at: <http://northernuganda.usvpp.gov/peacerec2.html>.

²¹ Amnesty Act, Article 16.

b) The Geneva Conventions Act of 1964

29. Uganda is a party to the Geneva Conventions and its two additional Protocols of 1977.²³

30. Uganda enacted the Geneva Conventions Act in 1964,²⁴ which criminalises grave breaches of the Geneva Conventions in the context of international armed conflict. However, there has been no amendment to this Act following the adoption of the two additional Protocols.

c) Other Relevant Acts

31. Other relevant Acts include:

- The Penal Code Act²⁵ which contains provisions incriminating conducts such as murder and manslaughter, rape and abduction, grievous harm and assaults,
- The Trial on Indictments Act,²⁶
- The Magistrates Courts Act and
- The Criminal Procedure Code Act ²⁷

D. The Experiences of Victims of Crimes Within the Jurisdiction of the Court in Seeking Justice from Ugandan Courts

32. To the knowledge of the Amici there have been no investigations and prosecutions into crimes within the jurisdiction of the Court allegedly perpetrated by members of the LRA and therefore impunity continues to be pervasive.²⁸ As this submission is presented in the context of the ICC Prosecutor's case against Joseph Kony, Vincent Otti, Okot Odhiambo and

²² "Peace Process, Peace and Reconciliation", US Embassy in Uganda, August 1-31, available at: <http://northernuganda.usvpp.gov/peacerec2.html>.

²³ The list of international humanitarian law treaties that Uganda has ratified is available on the website of the International Committee of the Red Cross, at: <http://www.icrc.org/ihl.nsf/Pays?ReadForm&c=UG>.

²⁴ The Geneva Conventions Act, Act 31, 1964, available at: <http://www.icrc.org/ihl-nat.nsf/6fa4d35e5e3025394125673e00508143/54b5049535abd0c1c125716100334c34!OpenDocument>.

²⁵ The Penal Code Act, Cap. 120, pp. 2719.

²⁶ Trial on Indictments Act, Ch 23.

²⁷ Criminal Procedure Act, Cap 166, pp. 2664.

²⁸ See, Concluding observations of the Human Rights Committee: Uganda, U.N. Doc. CCPR/CO/80/GA, 4 May 2004, para. 21; Human Rights Watch, "Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda", 19 September 2005, available at www.hrw.org/en/reports/2005/09/19/uprooted-and-forgotten.

Dominic Ongwen, the Amici restrict their comments to the experiences of victims in seeking justice from Ugandan courts for crimes allegedly committed by members of the LRA.

33. The reasons for impunity are diverse as described below, and it is submitted that they principally relate to:

- a) the limited capacity to assert criminal jurisdiction against members of the Lord's Resistance Army by virtue of the operation of the Amnesty Act of 2000 and related limitations;
- b) the characterisation of crimes under Ugandan law and the impact of such characterisation on the investigations and prosecutions; as well as
- c) the reluctance on the part of victims of crime allegedly perpetrated by the LRA to lodge complaints with the competent local bodies, fuelled by ignorance of the law, a belief in the ineffectiveness of judicial institutions and fear of negative repercussions.

(a) The Limited Capacity to Assert Criminal Jurisdiction over Members of the Lord's Resistance Army and Others by Virtue of the Operation of the Amnesty Act of 2000

34. The Ugandan Parliament passed the Amnesty Act in 2000. It affords an amnesty to "any Ugandan who has ... engaged in war or armed rebellion against the government by either participating in combat, engaging in any other criminal activity connected with the conflict, or aiding or abetting insurgents [,who] shall not be prosecuted or subjected to any form of punishment".²⁹ The certificate of amnesty is issued once the applicants report to a local authority and surrender their arms.

35. The Amnesty Commission was established in June 2000, and has resulted in the return of many thousands of LRA combatants. It has no discretion to deny amnesty to any applicant meeting the basic criteria referred to above. Almost 22,000 individuals have benefited from the law since its implementation.³⁰

²⁹ Part II 3(2) of the Amnesty Act of 2000.

³⁰ US Department of State Country Reports on Human Rights practices (Uganda)(2007), available at: <http://www.state.gov/g/drl/rls/hrrpt/2007/100510.htm>.

36. The United Nations High Commissioner for Human Rights called for a renunciation of amnesty for LRA leadership accused of serious crimes such as murder, enslavement, torture, rape, and sexual slavery.³¹ Indeed, in 2003, a Bill to amend the Amnesty Act was put forward in which “leaders” would be ineligible for amnesties.³² However, this Bill was never enacted into law. According to an amendment to the Amnesty Act dated 24 May 2006, the Minister for Internal Affairs may by statutory instrument declare a person ineligible for an amnesty, though there are no known instances in which this has been invoked.

37. The Peace Agreement which provides that “formal criminal and civil justice measures shall be applied to any individual who is alleged to have committed serious crimes or human rights violations in the course of the conflict,”³³ notes the importance of amending the existing Amnesty Act to bring it into conformity with the Agreement.³⁴ However, to date this has not been done, and it is unclear how and to what extent those accused of war crimes and crimes against humanity are eligible to stand trial before the Special Division. The Annexure states simply that “prosecutions shall focus on individuals who are alleged to have planned or carried out widespread, systematic, or serious attacks directed against civilians.”³⁵ In principle, the individuals indicted by the Office of the Prosecutor of the ICC could at present apply to be amnestied, and under the current provisions there is nothing preventing them from being granted an amnesty.

38. It is theoretically possible for criminal cases to be brought against members of the LRA who have not surrendered themselves through the amnesty process, however in practice this has not occurred, due in part to the difficulties in arresting such individuals and the impossibility to conduct trials in absentia under Ugandan law.

³¹ See U.N. High Commissioner for Human Rights, Report on the Mission Undertaken by Her Office, Pursuant to Commission Resolution 2000/60, to Assess the Situation on the Ground with Regard to the Abduction of Children from Northern Uganda, paras. 12-13, UN Doc. E/CN.4/2002/86 (April 26, 2000).

³² The Amnesty (Amendment) Act 2003, Bill No. 25.

³³ Para 4.1. The paragraph goes on to note that “Provided that, state actors shall be subjected to existing criminal justice processes and not to special justice processes under this Agreement.”

³⁴ Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord’s Resistance Army/Movement, Juba, Sudan, June 29, 2007, para. 14.4.

³⁵ Para 14 of Annexure.

(b) The Characterisation of Crimes Coming Within the Jurisdiction of the ICC and Related Impediments to Investigations and Prosecutions

39. According to one Ugandan commentator, “there have been no recorded prosecutions of international crimes *per se* in Uganda’s legal history.”³⁶ Ugandan law outlaws most of the underlying offences including the ordinary offences, rape,³⁷ abduction³⁸ and murder,³⁹ and, by virtue of its incorporation of the Geneva Conventions of 1949 into domestic law, grave breaches of the Geneva Conventions,⁴⁰ (applying in international armed conflicts only) e.g., “wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.” However, Uganda has not incorporated into domestic law Additional Protocol I criminalising violations of Common Article 3, nor has it specifically outlawed crimes against humanity or torture.⁴¹ In cases in which such crimes are perpetrated, prosecutions can proceed only for any included ordinary offences.

40. Whilst there is an ICC Bill which serves to incorporate offences under the jurisdiction of the ICC into Ugandan law, this Bill has not yet been promulgated. Even if and when it is promulgated, the Bill as currently drafted suggests that it will only apply to crimes

³⁶ B. Afako, “Country Study V: Uganda”, in Max du Plessis and Jolyon Ford (eds.), UNABLE OR UNWILLING? Case Studies on Domestic Implementation of the ICC Statute in Selected African Countries, Institute for Security Studies Monograph No 141, March 2008, available at: www.iss.co.za/dynamic/administration/file_manager/file_links/MONO141FULL.PDF.

³⁷ The Penal Code Act, Ch. 120, ss. 123-125.

³⁸ *Ibid.*, s. 126.

³⁹ *Id.*, s. 188.

⁴⁰ The Geneva Conventions Act, 1964.

⁴¹ *Conclusions and recommendations of the Committee against Torture: Uganda*, U.N. Doc. CAT/C/CR/34/UGA, 21 June 2005, para. 5. At present, it is only the Anti-Terrorism Act of 2002 that contains a specific offence of torture carrying a punishment of up to five years imprisonment or a fine, or both. It is, of limited scope, however, as it only applies to authorised officers engaged in anti-terrorism operations. See, Section 21(e) Anti-Terrorism Act 2002.

committed after its coming into force.⁴² Consequently, without taking into account the impact of the Amnesty Act on investigations and prosecutions, and the practical hurdles discussed below, the lack of domestic incorporation of international crimes (aside from the limited incorporation of the grave breaches provision) has prevented investigations and prosecutions of such crimes per se. The use of ordinary offences in lieu of international crimes itself fails to capture the gravity and aggravated nature of the international crimes.⁴³

41. The dearth of international crimes definitions typically also impacts on the extent to which such investigations and prosecutions may be entertained as a result of statutes of limitation, though in the case of Uganda, there are no statutes of limitation for investigations and prosecutions of ordinary crimes aside from a few exceptions stipulated in the Penal Code.

(c) The Reluctance on the Part of Victims of Crime to Lodge Complaints with the Competent Local Bodies

42. There are no known cases of investigations or prosecutions of crimes within the jurisdiction of the ICC allegedly perpetrated by the LRA.⁴⁴ Victims and groups consulted by the Amici⁴⁵ have expressed a reluctance to lodge complaints with the competent local bodies. Their reasons are comprised of both objective and subjective criteria, as detailed below, and include victims' lack of knowledge of and trust in the judicial system; victims' lack of financial means to progress cases and the quasi-impossibility to obtain reparations.⁴⁶ Also cited as a key barrier to criminal prosecutions was the inability of the competent Government authorities to arrest members of the LRA.⁴⁷ As was mentioned by one NGO

⁴² ICC Bill, Part II. Retroactive criminal legislation is unconstitutional under the provisions of article 28(7) of the Uganda Constitution: 'No person shall be charged with or convicted of a criminal offence which is founded on an act or omission that did not, at the time it took place, constitute a criminal offence'. It is unclear how Ugandan courts would interpret such a provision in light of Article 15 of the International Covenant on Civil and Political Rights, acceded to by Uganda on 21 June 1995.

⁴³ See, the Bagaragaza decision of the Appeals Chamber of the International Criminal Tribunal for Rwanda on the impact of the characterisation of genocide as homicide, *THE PROSECUTOR v. Michel BAGARAGAZA*, Case No. ICTR-05-86-AR11bis, Decision on 11bis Appeal, 30 August 2006.

⁴⁴ Research undertaken by the Amici, November 2008.

⁴⁵ Interviews undertaken by the Amici, November 2008.

⁴⁶ Interview undertaken by the Amici, November 2008.

⁴⁷ Interview undertaken by the Amici, November 2008. A civil society organisation based in northern Uganda indicates: "The victims we have been helping claimed to have approached the police and legal authorities, with the intent of filing their complaints with the local judiciary. But the response from states authorities have always

representative, “Before the ICC, people here were suffering within themselves”.⁴⁸ He added “Victims of crime before 2002 have no way to any system”.⁴⁹

1) Lack of knowledge

43. Organisations that have been working closely with victims in the north indicate that an important factor explaining the absence of criminal complaints filed by victims of the LRA is their lack of knowledge of their own rights and of the rules of the system.⁵⁰ Most victims live in remote, poor and insecure areas deeply affected by more than twenty years of conflict. This has put a serious strain on the delivery of essential State services, including education, law and order.⁵¹

2) Frustration and resignation: many victims believe that the legal system is ineffective

44. Given the absence of a central role for victims in criminal proceedings in Uganda, which is described more fully below, and coupled with the dangers inherent in making complaints and dearth of investigations and prosecutions by the competent authorities, there is an expectation on the part of many victims of impunity.

i) The Police

45. Ugandan police presence in the north of the country is limited.⁵² The United Nations’ Office of the High Commissioner for Human Rights reported that “while the national ratio of police to population is 1:1,800 in Uganda, still well below the recommended United Nations

been that LRA cases are far beyond the local judiciaries, they are still on rampage and even if you file a case, they won’t be tried. So any attempt by the victims to file their complaints has been looked as a waste of time.”

⁴⁸ Interview with the Amici, November 2008.

⁴⁹ Ibid.

⁵⁰ Interviews by the Amici with local organisations, November 2008; Amnesty International Report, “Doubly Traumatized: Lack of access to justice for female victims of sexual and gender based violence in northern Uganda”, AI Index: AFR 59/005/2007, 30 November 2007, p. 29, available at: www.amnesty.org/en/library/asset/AFR59/005/2007/en/6134175b-a2bb-11dc-8d74-6f45f39984e5/af590052007en.pdf.

⁵¹ REDRESS, “Torture in Uganda: A Baseline Study on the Situation of Torture Survivors in Uganda”, 2007, available at: http://www.redress.org/reports/TortureUganda_Apr%2007.pdf, pp. 26, 41; Interviews of the Amici with organisations in northern Uganda, November 2008.

⁵² REDRESS, “Torture in Uganda”, p. 45. Office of the United Nations High Commissioner for Human Rights (OHCHR), “Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council”, Report of the High Commissioner for Human Rights and follow-up to the World Conference on Human Rights Addendum Report on the work of the Office of the High Commissioner for Human Rights in Uganda, A/HRC/4/49/Add.2, 12 February 2007, pp 3, 9, 10, available at: www.unhcr.org/refworld/docid/461f78442.html. See also, Uganda Victims’ Rights Working Group. “Statement on the Annexure to the Juba Agreement on Accountability and Reconciliation” 10 April 2008 available at: <http://www.vrwg.org/Publications/05/UVRWG%20position%20paper%2010%20Apr%2008.pdf>.

standards of 1:450, the current ratio in northern and north-eastern Uganda is 1;4,968.”⁵³ Justice Ogoola, Principal Judge of the High Court, has acknowledged that “the situation in the conflict-affected north made it unsafe for the police to act.”⁵⁴ While the State and in particular JLOS are trying to tackle this issue,⁵⁵ the number of police that is planned to be deployed to the north is still half of what has been said to be required.⁵⁶ De facto, it is the military that is policing in the north, which has been said to have led itself to violations of human rights.⁵⁷

46. Police resources, in terms of both material (stationary, communication, transport) and human resources, are said to be inadequate,⁵⁸ as acknowledged and detailed in surveys commissioned by JLOS.⁵⁹ Manpower is not only scarce but is also understood to be qualitatively insufficient, as it consists of “newly trained special police constables or other junior officers with even less training”.⁶⁰

47. The attitude of the police⁶¹ has been said to discourage victims from filing criminal complaints. The police is said to suffer from corruption⁶² and is believed by many victims to be unlikely to take any action without being bribed or ‘paid’ to do so.⁶³ Victims interviewed by Amnesty International in 2007 stated that “it is standard practice for the police officers to demand money to arrest and transport suspects.”⁶⁴

⁵³ OHCHR report, A/HRC/4/49/Add.2 p. 10, para. 2, referring to Draft National Peace, Recovery and development Plan for Northern Uganda (PRDP) 2006-2009, 2 August 2006.

⁵⁴ OHCHR report, A/HRC/4/49/Add.2, p. 9, para. 17

⁵⁵ JLOS, Baseline Study on Criminal Justice, Final Report 2002, paras 17 et seq., in particular 19, available at : www.judicature.go.ug/Uganda/doc/pdf/3b_criminal_justice_survey.pdf; OHCHR Report, A/HRC/4/49/Add.2 p. 9 para. 19 and p. 10 para 21.

⁵⁶ OHCHR Report, A/HRC/4/49/Add.2, p. 10, para. 21.

⁵⁷ OHCHR Report, A/HRC/4/49/Add.2, p. 9, para. 17.

⁵⁸ OHCHR Report, A/HRC/4/49/Add.2, p. 10.

⁵⁹ JLOS, Baseline Study on Criminal Justice, Final Report 2002 pp.15, 113, 146; OHCHR report, A/HRC/4/49/Add.2 p. 10.

⁶⁰ Amnesty International Report, “Doubly Traumatized”, p. 18; REDRESS, “Torture in Uganda”, p. 11.

⁶¹ Amnesty International Report, “Doubly Traumatized”, p. 14; REDRESS, “Torture in Uganda”, p. 30.

⁶² JLOS, Strategic Investment Plan, Final Draft, 2006, p.21, available with the Amici; OHCHR Report, A/HRC/4/49/Add.2 p. 10, para. 22.

⁶³ Amnesty International Report, “Doubly Traumatized”, p. 16.

⁶⁴ Ibid.

48. In addition, the incompetence displayed by the police, their lack of professionalism,⁶⁵ as well as very long delays in obtaining a hearing or a medical examination are also reported to frustrate victims in their quest for justice.⁶⁶

49. Furthermore, the police has shown indifference and insensitivity to the situation and rights of traumatised victims.⁶⁷ As provided by Amnesty International, female victims of violence, in particular sexual violence, are “doubly traumatized”.⁶⁸ Women are indeed less likely to take legal action, particularly in cases of sexual violence due to, notably, the insensitive handling of cases by the predominantly male officials.⁶⁹

50. Victims are not protected in criminal investigations. There is no law or operational programme to ensure victim protection.⁷⁰ Instances of harassment and intimidation have been regularly reported,⁷¹ and many victims fear retribution by the perpetrators who are still free.⁷² Many victims feel that the police is unable to protect them generally and even more so if they file criminal complaints.⁷³ Furthermore, many victims report to be scared of the idea of facing the perpetrators in local or even national courts.⁷⁴

51. Moreover, many victims fear negative repercussions not only from the perpetrator(s) (in this case the LRA), but also from the community itself.⁷⁵ Victims of rape often opt to remain silent in order to avoid stigmatisation.⁷⁶ Many victims have also reported experiencing pressure from the community to forgive; communities are fearful of attempting to assert their rights, and believe that the problems should be solved among the community.⁷⁷

⁶⁵ OHCHR Report, A/HRC/4/49/Add.2, p. 10, paras 23-24.

⁶⁶ Amnesty International Report, “Doubly Traumatized”, p. 2.

⁶⁷ *Id.* pp. 2, 18-21.

⁶⁸ Amnesty International Report, “Doubly Traumatized: Lack of access to justice for female victims of sexual and gender based violence in northern Uganda”, AI Index: AFR 59/005/2007, 30 November 2007.

⁶⁹ REDRESS, “Torture in Uganda”, p. 26.

⁷⁰ REDRESS, “Torture in Uganda”, pp. 8, 23, 32. See also, Uganda Victims’ Rights Working Group. “Statement on the Annexure to the Juba Agreement on Accountability and Reconciliation”.

⁷¹ REDRESS, “Torture in Uganda”, p. 44.

⁷² REDRESS, “Torture in Uganda”, p. 41.

⁷³ Victims interviewed by the Amici, November 2008.

⁷⁴ Victims interviewed by the Amici, November 2008.

⁷⁵ Amnesty International Report, “Doubly Traumatized”, p. 13.

⁷⁶ Amnesty International Report, “Doubly Traumatized”, p. 11; REDRESS. “Torture in Uganda”, p. 26.

⁷⁷ REDRESS, “Torture in Uganda”, pp 10, 43.

52. For all these reasons, “The victims think the police can’t help, and it’s true.”⁷⁸

ii) The Courts

53. The High Court and Supreme Court are perceived to have integrity and have an established record of judgments, though possibly of lesser size and complexity than what is under consideration for the Special Division. Equally, there is a strong legal community, academics and NGOs. However, judicial institutions are weak in the north.⁷⁹ Although some progress has been made,⁸⁰ courts with criminal jurisdiction suffer from a lack of capacity, resulting in large backlogs and delays;⁸¹ inaccessibility for economic and geographic reasons;⁸² as well as reported partiality and corruption.⁸³

54. Unlike the procedures in place at the ICC, victims have no locus standi in criminal proceedings as per Ugandan law and their participation is limited to reporting crimes and witness testimony. Private prosecutions are possible though their use is limited and impracticable. Consequently, victims are not legally represented in criminal proceedings in Ugandan courts. If a scheme affording victim participation was to be introduced, extreme poverty would impede many victims from covering the legal fees. According to a Legal Aid Baseline Survey, there are no primary legal aid services in 90% of Ugandan districts,⁸⁴ and the situation is particularly critical in the north.⁸⁵

3) Difficulties to obtain reparation

55. The Ugandan Constitution does not contain an explicit right to reparation for victims of crimes that do not consist of violations of human rights by state agents. Only victims of State agents or state action have such a right.⁸⁶ While the Uganda Human Rights Commission

⁷⁸ Interview by the Amici, November 2008.

⁷⁹ OHCHR report, A/HRC/4/49/Add.2, p. 12, para. 31.; REDRESS, “Torture in Uganda”, pp. 43, 46.

⁸⁰ Amnesty International Report, “Doubly Traumatized”, p. 2, REDRESS. “Torture in Uganda”, p. 46.

⁸¹ REDRESS, “Torture in Uganda”, p. 46; OHCHR, p. 12, paras 32-33; Amnesty International Report, “Doubly Traumatized”, p. 2; Justice Law And Order Sector Criminal Justice Baseline Survey, Summary 2003. See also, Uganda Victims’ Rights Working Group, “Statement on the Annexure to the Juba Agreement on Accountability and Reconciliation”.

⁸² OHCHR Report, A/HRC/4/49/Add.2, p. 12, para. 32.

⁸³ OHCHR Report, A/HRC/4/49/Add.2, p. 12, para. 32.

⁸⁴ Foundation for Human Rights Initiatives, Deprivation of the Right to Life, Liberty and Security of Person in Uganda, 2006, p.48, available at www.fhri.or.ug/index.php?option=content&task=view&id=30; REDRESS, “Torture in Uganda”, p. 27.

⁸⁵ OHCHR, A/HRC/4/49/Add.2, p. 12, para. 34.

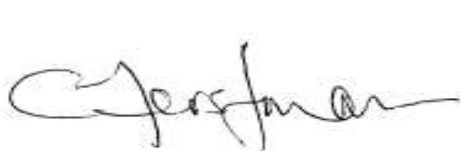
⁸⁶ Article 50 of the Constitution states that any person who claims that a fundamental or other right or freedom guaranteed by the Constitution has been infringed or threatened is entitled to apply to a competent court for

("UHRC")⁸⁷ has the authority to investigate claims made by any person or group of persons for the violation of any human right,⁸⁸ and has the authority to award reparations, victims of crimes perpetrated by persons who are not state agents have been understood as outside the mandate of the UHRC.

56. In theory, victims can obtain reparation from civil or criminal courts, though poor accessibility has severely limited this in practice. Cases can be brought in tort before the Magistrates or the High Court, which has awarded monetary damages for fundamental rights violations in cases such as *Joseph Tumushabe v Attorney General*.⁸⁹ Victims may also obtain reparation through the criminal courts though there is only limited practice. In addition to any other punishment, the courts have discretion to order a convicted person to pay compensation if it appears on the evidence that the aggrieved party has suffered material losses, which would be substantially recoverable in a civil suit.⁹⁰ In practice, there have been several successful civil cases brought before the Gulu High Court, though these have concerned UPDF violations only.⁹¹

All of which is respectfully submitted to inform the Court.

For The Applicants



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reparation, which may include compensation. In *Joseph Tumushabe v Attorney General*, the applicant brought a claim before the High Court under Article 50, on behalf of twenty-five people whose rights and freedoms had allegedly been infringed. The judge in this case made several orders, including the award of monetary damages. See also article 137(4) of the Constitution.

⁸⁷ The Operational Guidelines and annual reports of the Ugandan Human Rights Commission are available at www.uhrc.org.

⁸⁸ Constitution of Uganda 1995, Article 52.

⁸⁹ *Joseph Tumushabe v Attorney General*, Miscellaneous Application No.63 of 2003

⁹⁰ Section 209 of the Magistrates Court Act, 2000.

⁹¹ REDRESS, "Torture in Uganda", p. 46.

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