PUBLIC STATEMENT

Second Public Hearing of the Office of the Prosecutor, 26 September 2006

REDRESS, the international NGO promoting victims’ rights, is grateful to the Office of the Prosecutor (OTP) for organising this Second Public Hearing. We hope it will be a useful opportunity to exchange views and to enhance cooperation between the OTP, civil society groups and other stakeholders.

REDRESS has been involved in the ICC since before the Rome Conference. It has focused on promoting the interests of victims in ICC proceedings, as key stakeholders, as active and subjective participants in the justice process given their status as rights-holders in international law. Today, our intervention will place emphasis on the active role of the OTP to address the rights and interests of victims.

COMMENTS ON THE PAST THREE YEARS OF THE OTP

REDRESS’s comments on OTP’s 3 Year Report relate to the following two areas:
- The Standard of Gravity and Selection of Cases
- Conducting Investigating in On-going Violence

1) Standard of Gravity and Selection of Cases:

REDRESS appreciates that OTP’s actions must be focused on addressing the most serious crimes and refers to the list of factors set out by the OTP, relevant in assessing gravity, which include: the scale of the crimes, the nature of the crimes, the manner of commission of the crimes and the impact of the crimes.1 The OTP has indicated in its Report that this approach has been used to select situations; and through its “sequenced” approach to also select cases within a situation.

REDRESS is concerned however, that this “gravity test” has not been applied to the charges within cases. Whilst the OTP has stated that: “In principle, incidents will be selected to provide a sample that is reflective of the gravest incidents and the main types of victimization” in practice, the charges laid against Mr. Lubanga, which focus exclusively on conscripting, enlisting or using children under the age of fifteen in hostilities, do not achieve this. REDRESS is concerned that the “gravity test” is here being replaced with something more akin to an “expediency test.”2 REDRESS, together with a number of other NGOs, wrote to the OTP expressing its concern with the narrowness of the indictment.3 A narrow indictment will impact upon the range of victims that will be entitled to participate in later phases of proceedings including reparations, and provides a skewed message to the communities most affected. In addition, recent research conducted by REDRESS on children affected by armed conflict demonstrates that:

- singling out child soldiers against other child victims or other victims in their communities may have a detrimental effect on child re-integration;

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1 Draft Policy Paper on Selection Criteria.
2 Activity Report, p. 8.
3 Joint letter, available online here: http://www.vrwg.org/Publications/02/DRC%20joint%20letter%20english%201-8-2006.pdf.
child soldiers have suffered numerous other crimes, in addition to, or as part of their initiation into armed groups or forces, most notably sexual violence, being forced to kill family members, etc. These merit fuller investigation by the OTP.

In an environment where it is still generally unknown that child recruitment is a war crime, and where children have also joined groups “voluntarily” a concerted OTP outreach strategy is required to explain the charges or its deterrent potential will be lost.

2) Conducting Investigations in Situations of On-going violence

REDRESS is conscious of the challenges faced by the OTP in conducting investigations in situations of on-going violence, and the need to protect victims and witnesses. Of course this is a concern that we share. Whilst organisations such as REDRESS can never know the extent of the constraints placed on the OTP, we are nonetheless concerned about the repeated use of the security environment, and its potential impact on victims, as a reason to delay hearings, prevent proceedings from moving forward or suspend investigations, as recently evidenced by proceedings in DRC and Darfur.

OTP’s approach to the protection of victims and witnesses appears to be one of reducing the numbers of persons it needs to call as witnesses (and hence reducing the protection burden) by reducing the breadth of the charges. This approach of narrowing the involvement of those most affected in order to maximise protection [a “negative protection”] must be used with caution, given the detrimental impact it has on victims’ rights and ability to be involved in proceedings - either as witnesses or claimants. More dialogue on how to protect victims whilst positively enabling them to obtain justice, should be the primary objective.

In relation to Darfur, we make note of some of the helpful suggestions of Prof. Cassese in his recent amicus report to Pre-Trial Chamber I on measures to protect victims and witnesses and preserve evidence in Darfur. Also, we encourage the OTP to maintain a close collaboration with organizations representing victims inside Sudan in order to continually assess the optimal way to involve victims in the investigative phase. Further, we wonder whether the OTP has considered whether greater engagement and publicity about the ICC, including visits to Khartoum, and Darfur as far as possible, could positively enhance the general security for victims and witnesses. We also would welcome information on whether the OTP is seriously considering Prof. Cassese’s suggestion to formally request the Government of Sudan to report on the measures it is taking to protect victims and witnesses, as a lever to seek greater compliance.

COMMENTS ON THE OTP’s REPORT ON PROSECUTORIAL STRATEGY

REDRESS welcomes the opportunity to comment on the OTP’s Report on Prosecutorial Strategy. Our comments follow and reflect the statement prepared by the Victims’ Rights Working Group in response to the Court’s Strategic Plan, which raised concerns about what was perceived as an over-emphasis on efficiency of administration and insufficient emphasis on the quality of justice and its resonance with key stakeholders. Following on from the Statute’s handling of victims’ interests, the Court’s vision should make specific reference to the reparative mandate of the Court and should recognise victims as active stakeholders with respect to the crimes investigated and prosecutes - and not just the passive recipients of justice.
With regard to the Prosecutorial Strategy, and the important objective of continuously improving the way in which the Office interacts with victims and addresses their interests, we make the following remarks:

The OTP strategy paper places significant emphasis on seeking the views of victims and their communities early in the process, as a key means to improving interaction and addressing their interests. REDRESS agrees with the OTP that this is vital, yet reminds that this is but a first step - a multi-layered strategy which recognizes the different rights and roles of victims within the ICC system is needed. With respect to the OTP in particular, this would include:

- **Maximising the ability for victims’ voices to be heard in full dignity.** The OTP should ensure that victims communities approached in the investigative phase are made aware of the ability of victims to participate. REDRESS is aware of the OTP’s views on victim participation during the investigative phase, but now that a final decision has been reached by the Court, the OTP should within its mandate, contribute to the implementation of the decision. Furthermore, protection strategies that foster victims’ rights to participate and obtain redress in accordance with international law should be preferred over solutions that require victims to suffer in silence and without voice.

- **Recognising the Reparative Mandate of the Court** - Whilst the OTP’s mandate is to investigate and prosecute criminal suspects, it operates within an international environment in which its role is decidedly more complex. The OTP has a responsibility to see that justice is delivered respecting the interests of all parties, including victims. Reparation for victims includes as appropriate, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. A key component of reparation is the acknowledgement by a judicial instance of the harm done to victims. The implementation of the Prosecutor’s case selection strategy and the breadth of charges will greatly influence the extent to which victims may receive material and moral reparations, and due consideration of this should be reflected in the OTP’s forward looking strategy.

- Equally, given the judicial phase of the Court, the OTP should place a greater emphasis on locating, freezing and seizing assets for the eventual benefit of victims, within its immediate strategy objectives.

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