

**Cour
Pénale
Internationale**
**International
Criminal
Court**

No.: ICC-02/04

Date: 8 July 2005

Original: English

PRE-TRIAL CHAMBER II

Before: Judge Tuiloma Neroni Slade

Judge Mauro Politi

Judge Fatoumata Dembele Diarra

Registrar: Mr Bruno Cathala

SITUATION IN UGANDA

Under Seal

Ex Parte, Prosecutor Only

**DECISION ON THE PROSECUTOR'S APPLICATION FOR WARRANTS OF
ARREST UNDER ARTICLE 58**

The Office of the Prosecutor

Mr Luis Moreno Ocampo, Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor

Ms Christine Chung, Senior Trial Lawyer

Mr Eric MacDonald, Trial Lawyer

PRE-TRIAL CHAMBER II (the “Chamber”) of the International Criminal Court (the “Court”), sitting as the full Chamber pursuant to its decision on the 18th day of May 2005, to which, on the 5th day of July 2004, the Presidency assigned the situation in Uganda pursuant to regulation 46 of the Regulations of the Court (the “Regulations”);

HAVING RECEIVED the “Prosecutor’s application for Warrants of Arrest under Article 58” dated the 6th day of May 2005, as amended and supplemented by the Prosecutor on the 13th day of May 2005 and on the 18th day of May 2005 (the “Prosecutor’s application”), and having considered it on the basis of the amended application dated the 18th day of May 2005;

NOTING the Prosecutor’s request to be authorised to exceed the 50-page limit for his application for the issuance of warrants of arrest and the Chamber’s decision on the 18th day of May 2005 granting the request;

NOTING that the Prosecutor’s application seeks warrants of arrest for Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo and Dominic Ongwen, for some or all of the crimes listed under Counts 1 to 33 as set out in the Prosecutor’s application;

BEING SATISFIED that, based upon the application, the evidence and other information submitted by the Prosecutor, and without prejudice to subsequent determination, the case against Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo and Dominic Ongwen falls within the jurisdiction of the Court and appears to be admissible;

BEING SATISFIED that, based upon the application, the evidence and other information submitted by the Prosecutor, there are reasonable grounds to believe that Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo and Dominic Ongwen committed crimes within the jurisdiction of the Court and that their arrests appear to be necessary under article 58, paragraph 1(b), of the Statute of the Court (the "Statute");

HAVING DECIDED to grant the Prosecutor's application for the issuance of warrants of arrest for Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo and Dominic Ongwen (the "Warrants");

NOTING article 91, paragraph 2 (b), of the Statute, which provides that the request for arrest and surrender shall contain or be supported by a copy of the warrant of arrest;

NOTING the Prosecutor's request that the Office of the Prosecutor be permitted to transmit the Warrants and the requests for arrest and surrender relating thereto (the "Requests") to the relevant States parties and States not party to the Statute, and the reasons and concerns submitted by the Prosecutor in support of his request;

NOTING that the Prosecutor invokes rule 176, sub-rule 2, of the Rules of Procedure and Evidence (the "Rules") as the basis for his request to transmit the Warrants and the Requests;

NOTING the reasons and concerns submitted by the Prosecutor during the hearing held before the Chamber on the 16th day of June 2005, in support of his request to transmit the Warrants and the Requests;

NOTING the authorities cited during the hearing held on the 16th day of June 2005 and submitted by the Prosecutor on the 17th day of June 2005, and having examined such authorities;

NOTING that articles 87 and 89 of the Statute provide, respectively, that a request for cooperation may be made and that a request for arrest and surrender may be transmitted by the "Court";

CONSIDERING that, pursuant to article 87 of the Statute, the Chamber, as one of the judicial organs of the Court, may make a request for cooperation and for arrest and surrender;

NOTING that article 89 of the Statute needs to be read in connection with rule 176, sub-rule 2, of the Rules, which provides explicitly that the Registrar of the Court (the "Registrar") "shall transmit" the requests for cooperation "made by the Chambers" and shall receive the responses, information and documents from requested States;

NOTING that rule 176, sub-rule 2, of the Rules also provides explicitly for a separate and distinct procedure, by which the Office of the Prosecutor "shall transmit" the requests for cooperation "made by the Prosecutor" and shall receive the responses, information and documents from requested States;

CONSIDERING the Requests issued by the Chamber as a result of the Prosecutor's application to be "made by the Chambers" within the meaning of rule 176, sub-rule 2, of the Rules;

NOTING also the tenor of other provisions of the Court's instruments, including rule 184 of the Rules, by which the requested State shall immediately inform the Registrar when the person sought by the Court is available for surrender and shall surrender the person by the date and in the manner agreed upon between the authorities of the requested State and the Registrar; and regulation 111 of the Regulations, which entrusts the Registrar with the transmission of a request for arrest and surrender in accordance with article 89, paragraph 1, of the Statute;

CONSIDERING that the literal meaning and purpose of rule 176, sub-rule 2, of the Rules, as evident also from its drafting history, is to establish two separate and distinct procedures involving, on the one hand, the Registrar in the discharge of his responsibilities with respect to requests for cooperation made by the Chambers; and, on the other hand, the Prosecutor, in respect of the requests for cooperation made by the Prosecutor, in line with the Prosecutor's powers under articles 42 and 54 of the Statute;

CONSIDERING that the above reading of rule 176, sub-rule 2, of the Rules, in connection with article 89, paragraph 1, of the Statute, does not deprive any of these provisions of meaningful content, but rather clarifies their scope in relation to the specific functions and responsibilities of the Prosecutor under articles 42 and 54 of the Statute;

NOTING that under rule 176, sub-rule 2, of the Rules, the Registrar also has a role in informing the Chamber of the responses, information and documents received from requested States;

CONSIDERING that, unlike Rule 55 (D) of the Rules of Procedure and Evidence of the International Criminal Tribunal for the Former Yugoslavia, referred to by the Prosecutor in his submissions, rule 176, sub-rule 2, of the Rules is not explicit as to any discretion of the Chamber regarding the organ to be entrusted with the transmission of the requests for cooperation and the receipt of the responses thereto;

CONSIDERING that the Chamber, in the exercise of its functions under the Statute, does not exclude the possibility of allocating to the Prosecutor, under specific and compelling circumstances, the transmission of a particular request for cooperation, or warrant of arrest, and the receipt of responses thereto;

CONSIDERING, however, that such specific and compelling circumstances are not established in the Prosecutor's application;

NOTING that the Prosecutor stated during the hearing held on the 16th day of June 2005 that it is not the "current intention" of his Office "to make the arrest warrants public or to seek their immediate transmission";

CONSIDERING that the main reason submitted by the Prosecutor in support of his request and further elaborated upon during the hearing held on the 16th day of June 2005 appears to be the Prosecutor's wish to exercise discretion as to the

timing and manner of the disclosure of the Warrants, with a view to determining “the moment at which the disclosure is optimal”;

CONSIDERING that, under the relevant provisions of the Statute and of the Rules, the necessity for the issuance of a warrant and for its transmission must be justified on the basis of circumstances and evidence existing at the time of the application, and is not dependant or conditional on future circumstances;

CONSIDERING that the other concerns highlighted by the Prosecutor may be properly addressed by way of consultation and close cooperation between the Registrar and the Prosecutor, in accordance with the terms specified in the Requests, to ensure proper coordination with relevant entities and State authorities and thereby maximise the prospects for arrest while minimising the risk of threats or retaliatory attacks against witnesses and victims;

CONSIDERING, in these circumstances, that the Registrar is the competent and appropriate organ of the Court to transmit the Warrants and the Requests;

NOTING the Prosecutor’s request that the Prosecutor’s application and all the proceedings relating thereto be treated as under seal and be kept under seal;

CONSIDERING the Prosecutor’s request as to confidentiality to be proper and justified in the circumstances described in the Prosecutor’s application;

NOTING the Prosecutor’s request for appropriate protective measures under article 87, paragraph 4, of the Statute;

CONSIDERING the request for such protective measures to be proper and justified in the circumstances described in the Prosecutor's application, as further clarified during the hearings held on the 16th day of June 2005 and on the 21st day of June 2005;

NOTING the statements made by the Prosecutor during the hearings held on the 16th day of June 2005 and on the 21st day of June 2005 and noting, in particular, that the implementation of the Prosecutor's overall plan for the security of witnesses and victims in the field, as being developed in cooperation with the Victims and Witnesses Unit, is still ongoing and is yet to be completed;

CONSIDERING that there is a need for the Chamber to be properly and regularly informed of steps being taken to develop and implement security measures in the field, with a view to the exercise of its functions and responsibilities for the protection and privacy of victims and witnesses;

FOR THESE REASONS,

DECIDES that, for each of the persons whose arrest is sought by the Prosecutor, the Warrants and the Requests be issued as separate documents;

REJECTS the Prosecutor's request to transmit the Warrants and the Requests to the relevant States;

DECIDES that the Warrants and the Requests, as well as the enclosed documentation as required by article 91, paragraph 2, of the Statute, be transmitted by the Registrar to the relevant States, in accordance with the terms set out in the Requests;

DECIDES, for the purposes of the Requests, to authorise disclosure to the Registrar of the Prosecutor's application, this decision, the Warrants and the Requests;

DECIDES that any information relating to the Prosecutor's application, the Requests and subsequent proceedings be provided and handled in a manner that protects the safety, or physical or psychological well-being of any victims, potential witnesses and their families, in particular those mentioned in the Prosecutor's application, in accordance with articles 68 and 87, paragraph 4, of the Statute;

DECIDES, without prejudice to the responsibilities of the Prosecutor under the Statute, that any measures, including relocation and measures related to the protection of information, as may be necessary or appropriate to ensure the safety or physical or psychological well-being of any victims, potential witnesses and their families, and in particular of those mentioned in the Prosecutor's application, be taken pursuant to articles 68 and 87, paragraph 4, of the Statute and in accordance with the terms of the Requests;

DECIDES also that, without prejudice to the responsibilities of the Prosecutor under the Statute, any other measures which may be necessary or appropriate to

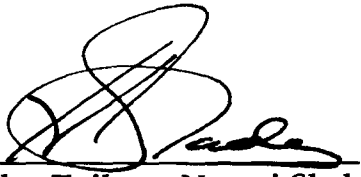
prevent the disclosure of the identity or whereabouts of any victims, potential witnesses and their families, in particular of those mentioned in the Prosecutor's application, be taken in accordance with the terms of the Requests;


REQUESTS the Prosecutor, in consultation and cooperation with the Registrar and the Victims and Witnesses Unit, to inform the Chamber on a periodic and regular basis as to developments concerning the implementation of protective and security measures in the field;

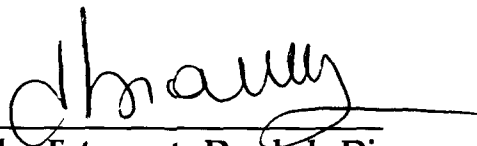
ORDERS that the Prosecutor's application, the Warrants and the Requests be treated as under seal and be kept under seal, in accordance with this decision of the Chamber and until further order by the Chamber;

DECIDES that this decision be kept under seal until further order by the Chamber.

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


Judge Tuiloma Neroni Slade
Presiding Judge


Judge Mauro Politi


Judge Fatoumata Dembele Diarra

Dated this 8th day of July 2005

At The Hague, The Netherlands

Seal of the Court