

**Cour
Pénale
Internationale**

**International
Criminal
Court**

No.: ICC-02/04-01/05

Date: 13 October 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
Case 01/05**

Public document

**DECISION ON THE PROSECUTOR'S APPLICATION FOR UNSEALING OF
THE WARRANTS OF ARREST**

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

1. **PRE-TRIAL CHAMBER II** (the "Chamber") of the International Criminal Court (the "Court");
2. **SITTING** as the full Chamber, pursuant to the Chamber's decision on the 18th day of May 2005;
3. **NOTING** 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 for warrants of arrest");
4. **NOTING** that in the Prosecutor's application for warrants of arrest, the Prosecutor requested sealing on the grounds that immediate disclosure of the application could: "(1) subject vulnerable groups in Uganda to the risk of retaliatory attacks by the LRA; and (2) undermine continuing investigative efforts";
5. **NOTING** further the Prosecutor's request that proceedings relating to the Prosecutor's application for warrants of arrest remain under seal until the security conditions in potentially affected areas improve or further protection measures can be arranged;
6. **NOTING** the Chamber's "Decision on the Prosecutor's application for warrants of arrest under article 58" dated the 8th day of July 2005, in which the Chamber ordered that the Prosecutor's application for warrants of arrest and the proceedings relating thereto, the warrants of arrest issued and the requests for arrest and surrender, be treated as under seal and be kept under seal until further order by

the Chamber; and that since the 8th day of July 2005 by order of the Chamber all other documents of the proceedings relating to the Prosecutor's application for warrants of arrest have been placed under seal until further order by the Chamber;

7. **HAVING** received the Prosecutor's "Application for Unsealing of Warrants of Arrest Issued on 8 July 2005, and Other Related Relief" dated the 9th day of September 2005 (the "Application for unsealing");

8. **NOTING** the functions and powers of the Chamber under article 57, paragraph 3 (c), of the Statute of the Court (the "Statute") with respect to the protection and privacy of victims and witnesses;

9. **NOTING** that under article 68, paragraph 1, of the Statute, "the Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses", and that under the same provision "[t]he Prosecutor shall take such measures particularly during the investigation";

10. **NOTING** article 43, paragraph 6, of the Statute, as well as article 68, paragraph 4, pursuant to which the Victims and Witnesses Unit (the "VWU") may provide to the Chamber advice on appropriate protective measures, security arrangements, counselling and other assistance for witnesses, victims and other persons who are at risk;

11. **RECALLING** the Chamber's request as contained in its decision dated the 8th day of July 2005 for the Prosecutor, in consultation and cooperation with the VWU,

to inform the Chamber on a periodic and regular basis as to developments concerning the implementation of protective and security measures in the field;

12. **NOTING** the request made by the Prosecutor in the Application for unsealing that some of the sealed documents, including the warrants of arrest, be unsealed;

13. **NOTING** in particular the request for the warrants of arrest for **Joseph KONY, Vincent OTTI, Raska LUKWIYA, Okot ODHIAMBO and Dominic ONGWEN** (the "Warrants") to be unsealed, in certain cases in redacted and amended form; and, as repeated in subsequent submissions of the Prosecutor, including at the status conferences held on the 3rd and 6th day of October 2005, that the Warrants be unsealed as a matter of priority;

14. **NOTING** that the Prosecutor affirmed in the Application for unsealing that the Office of the Prosecutor (the "OTP") and the VWU had nearly completed implementation of the overall plan for the security of witnesses and victims in the field; and that, in the opinion of the Prosecutor, unsealing of the Warrants would become "a feasible and powerful means of garnering international attention and support for arrest efforts, thus further ensuring the protection of victims, potential witnesses and their families";

15. **NOTING** the additional information received from the Prosecutor, in particular at the status conferences held on the 3rd and the 6th day of October 2005, on measures implemented for the protection of victims and witnesses; and the Prosecutor's continuing assurance that unsealing of the Warrants would not affect the security of victims and witnesses in light of the measures implemented;

16. NOTING further the Prosecutor's submission that keeping the Warrants under seal is impairing the arrest efforts;

17. NOTING also the statements made by the VWU, in particular at the status conferences held on the 3rd and the 6th day of October 2005, as to the implementation of the overall plan for the security of witnesses and victims in the field and the trials and testing of the protective measures put in place; and its assessment that unsealing of the Warrants would have no significant impact on the overall plan for protective measures;

18. NOTING the statements made by the Prosecutor at the status conference of the 6th day of October regarding the publicity given to the issuance of arrest warrants for top leaders of the LRA;

19. NOTING the detailed attention required to ensure that all relevant documents of the proceedings are given the correct and appropriate treatment following the unsealing of the Warrants and other related documents;

20. BEING satisfied on the basis of the information provided by the OTP and the VWU that the overall plan in respect of the situation in Uganda for the security of witnesses and victims in the field has been completed and implemented; and that by the assessment and advice of the Prosecutor and the VWU this overall plan provides the necessary and adequate protective measures for all concerned at this stage;

21. **BEING** satisfied that unsealing the Warrants and other decisions, hearings and documents in accordance with this Decision would have no significant impact on the implementation of the overall plan for the security of victims and witnesses;

22. **BEING** concerned, however, about the unpredictability of the security environment in Uganda and the necessity to ensure to the fullest extent possible the safety and protection of victims and witnesses, in particular through the redaction of relevant documents;

23. **BEING** convinced of the necessity to redact the warrants of arrest in the manner as attached to this Decision, and noting the Chamber's power to make such redaction pursuant to article 57, paragraph 3 (c), and article 68, paragraph 1, of the Statute and rule 87 of the Rules of Procedure and Evidence (the "Rules");

24. **NOTING** the Prosecutor's statements at the status conference held on the 3rd day of October 2005 that the OTP does not "plan [...] to continue investigating the past crimes", but intends to investigate future crimes of the LRA, including allegations of harbouring and supporting the LRA; and that OTP investigations and assessments of allegations made against the military forces of the Government of Uganda are ongoing;

25. **RECALLING** article 54, paragraph 1 (a), of the Statute, pursuant to which the Prosecutor shall "[i]n order to establish the truth, extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute, and, in doing so, investigate incriminating and exonerating circumstances equally";

26. **NOTING** article 53, paragraphs 2 and 3, of the Statute and rule 106 of the Rules;

HAVING REGARD THERETO AND FOR THESE REASONS;

THE CHAMBER HEREBY:

27. **DECIDES** to unseal the Warrant of Arrest for **Joseph KONY**, issued by the Chamber on the 8th day of July 2005, as amended on the 27th day of September 2005, and the Warrants of Arrest for **Vincent OTTI, Raska LUKWIYA, Okot ODHIAMBO** and **Dominic ONGWEN**, issued by the Chamber on the 8th day of July 2005, as well as the annexes to these warrants; and orders that the Warrants be made public in redacted form in the manner as attached to this Decision;

28. **DECIDES** to unseal the following decisions issued by the Chamber and orders that the same be made public:

- (i) Decision on the exercise of functions by the Full Chamber in relation to an application by the Prosecutor under article 58, dated the 18th day of May 2005;
- (ii) Decision on the extension of the page limit in relation to an application by the Prosecutor under article 58, dated the 19th day of May 2005;
- (iii) Decision on the Prosecutor's application for warrants of arrest under article 58, dated the 8th day of July 2005;

(iv) Decision on the Prosecutor's motion for clarification and urgent request for variation of the time-limit enshrined in rule 155, dated the 18th day of July 2005;

(v) Decision on the Prosecutor's application for leave to appeal in part Pre-Trial Chamber II's decision on the Prosecutor's applications for warrants of arrest under article 58, dated the 19th day of August 2005;

29. DECIDES to unseal, as to their existence only, the following documents:

(i) Prosecutor's Submission of Proposed Forms of Warrants of Arrest and Notification of Amendment to Application for Warrants of Arrest Under Article 58, dated the 13th day of May 2005;

(ii) Prosecutor's Proposed Redacted Version of Amended Application for Warrants of Arrest Under Article 58, dated the 18th day of May 2005;

(iii) Prosecutor's Amended Application for Warrants of Arrest Under Article 58, dated the 18th day of May 2005;

(iv) Decision of the Chamber to hold a hearing on the request under rule 176 made in the Prosecutor's application for warrants of arrest, dated the 9th day of June 2005;

(v) Decision of the Chamber to hold a hearing on the protection of victims and witnesses in connection with the Prosecutor's application for warrants of arrest and the Prosecutor's application, dated the 13th day of June 2005;

(vi) Requests for Arrest and Surrender of Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo and Dominic Ongwen, dated the 8th day of July 2005;

(vii) Prosecutor's Motion for Clarification and Urgent Request for Variation of the Time-Limit Enshrined in Rule 155, dated the 14th day of July 2005;

(viii) Decision of the Chamber to convene a status conference, dated the 5th day of October 2005;

30. DECIDES to unseal, as to their existence and their content, but only to the extent that such content is mentioned in this Decision or in the decisions mentioned in paragraph 28 above, the following hearings and documents:

- (i) Prosecutor's Application for Warrants of Arrest, dated the 6th day of May 2005;
- (ii) Hearing held in closed session on the 16th day of June 2005, including the transcript of the hearing held on the 16th day of June 2005;
- (iii) Hearing held in closed session on the 21st day of June 2005, including the transcript of the hearing held on the 21st day of June 2005;
- (iv) Prosecutor's Application for Leave to Appeal in Part Pre-Trial Chamber II's Decision on the Prosecutor's Applications for Warrants of Arrest Under Article 58, dated the 18th day of July 2005;
- (v) Prosecutor's Application for Unsealing of Warrants of Arrest Issued on 8 July 2005, and Other Related Relief, dated the 9th day of September 2005;
- (vi) Status conference held in closed session on the 3rd day of October 2005, including the transcript of the status conference held on the 3rd day of October 2005;
- (vii) Status conference held in closed session on the 6th day of October 2005, including the transcript of the status conference held on the 6th day of October 2005;

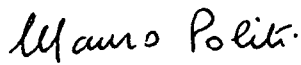
31. **DECIDES** to reserve its decision on the unsealing of other documents until further order by the Chamber;

32. **REQUESTS** the Prosecutor, in accordance with rule 106 of the Rules, to promptly inform the Chamber in writing of any decision concluding that "there is not a sufficient basis for prosecution under article 53, paragraph 2" of the Statute, and the reasons for this conclusion, in view of the Chamber's powers under article 53, paragraph 3 (b), of the Statute.

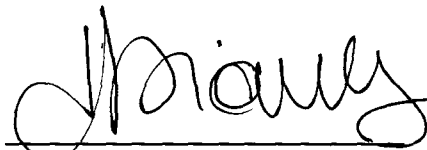
Done in both English and French, the English version being authoritative.



Judge Tuiloma Neroni Slade
Presiding Judge



Judge Mauro Politi



Judge Fatoumata Dembele Diarra

Dated this 13th day of October 2005

At The Hague, The Netherlands

Seal of the Court