

**Cour  
Pénale  
Internationale**  

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**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**

**Public redacted version**

**WARRANT OF ARREST FOR RASKA LUKWIYA**

**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”), sitting as the full Chamber pursuant to its decision on the 18<sup>th</sup> day of May 2005, to which, on the 5<sup>th</sup> day of July 2004, the Presidency assigned the situation in Uganda pursuant to regulation 46 of the Regulations of the Court (the “Regulations”);
2. **HAVING RECEIVED** the “Prosecutor’s application for Warrants of Arrest under Article 58” dated the 6<sup>th</sup> day of May 2005, as amended and supplemented by the Prosecutor on the 13<sup>th</sup> day of May 2005 and on the 18<sup>th</sup> day of May 2005 (the “Prosecutor’s application”), and having considered it on the basis of the amended application of the 18<sup>th</sup> day of May 2005;
3. **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 18<sup>th</sup> day of May 2005 granting the request;
4. **NOTING** that the Prosecutor’s application seeks a warrant of arrest for **RASKA LUKWIYA** for the crimes listed under Counts 6 to 9, as set out in the Prosecutor’s application, as well as warrants of arrest for four other persons named in the Prosecutor’s application;

#### **The Lord’s Resistance Army (the “LRA”)**

5. **CONSIDERING** the general allegations presented in the Prosecutor’s application that the LRA is an armed group carrying out an insurgency against the Government of Uganda and the Ugandan Army (also known as

the Uganda People's Defence Force ("UPDF")) and local defence units ("LDUs") since at least 1987; that over this time, including the period from 1 July 2002, the LRA has been directing attacks against both the UPDF and LDUs and against civilian populations; that, in pursuing its goals, the LRA has engaged in a cycle of violence and established a pattern of "brutalization of civilians" by acts including murder, abduction, sexual enslavement, mutilation, as well as mass burnings of houses and looting of camp settlements; that abducted civilians, including children, are said to have been forcibly "recruited" as fighters, porters and sex slaves to serve the LRA and to contribute to attacks against the Ugandan army and civilian communities;

6. **CONSIDERING** that the existence and acts of the LRA, as well as their impact on Uganda's armed forces and civilian communities, have been reported by the Government of Uganda and its agencies and by several independent sources, including the United Nations, foreign governmental agencies, non-governmental organisations and world media;
7. **CONSIDERING** the allegations that the LRA was founded and is led by Joseph Kony, the Chairman and Commander-in-Chief, and that the LRA is organised in a military-type hierarchy and operates as an army;
8. **CONSIDERING** the allegations that LRA forces are divided into four brigades named Stockree, Sinia, Trinkle and Gilva, and that since July 2002 the LRA's hierarchy of posts under Joseph Kony's overall leadership has included Vincent Otti, the Vice-Chairman and Second-in-Command; **RASKA LUKWIYA**, the Army Commander who formerly occupied the posts of Brigade General and Deputy Army Commander; the Division Commander

and four Commanders of equal rank, each of whom leads one of the four LRA brigades;

9. **CONSIDERING** the specific allegations that Joseph Kony, Vincent Oti and other senior LRA commanders, including **RASKA LUKWIYA**, are the key members of “Control Altar”, the section representing the core LRA leadership responsible for devising and implementing LRA strategy, including standing orders to attack and brutalise civilian populations;
10. **HAVING EXAMINED** the Prosecutor’s submission that, in his capacity as the former Deputy Army Commander of the LRA, and together with other persons whose arrests are sought by the Prosecutor, **RASKA LUKWIYA** ordered the commission of several crimes within the jurisdiction of the Court during REDACTED 2003;
11. **CONSIDERING** that sources indicated by the Prosecutor as confirming **RASKA LUKWIYA**’s role within the LRA’s leadership include recordings of intercepted radio communications, accounts from former members of the LRA and accounts from witnesses and victims;
12. **CONSIDERING** the Prosecutor’s allegations that, in or around the middle of the year 2002, Joseph Kony ordered LRA forces to begin a campaign of attacks against civilians in the regions of REDACTED and REDACTED; that, in REDACTED 2003, Joseph Kony ordered LRA fighters, known also as rebels, to move into the REDACTED region, attack the UPDF forces and civilian settlements and abduct civilians for the purpose of recruitment to the ranks of the LRA (the “REDACTED campaign”); that, in response to Joseph

Kony's orders, senior LRA commanders, including Vincent Otti and **RASKA LUKWIYA**, moved into the REDACTED region to conduct LRA operations; that LRA operations also continued to be conducted in the REDACTED region; that REDACTED 2003, Joseph Kony issued broad orders to target and kill civilian populations, including those living in camps for internally displaced persons ("IDP"); that, during the REDACTED campaign and other LRA operations, there existed standing orders, given by Joseph Kony, to loot and to abduct civilians; that **RASKA LUKWIYA**'s direct involvement with the objectives and strategies of the campaign as a whole is shown by recordings of intercepted radio communications, accounts from former members of the LRA and accounts from witnesses and victims;

13. **NOTING** that the Prosecutor's application charges **RASKA LUKWIYA** with criminal responsibility for the attack on the REDACTED IDP Camp REDACTED mentioned hereafter forming part of the REDACTED campaign and having occurred in REDACTED 2003;

14. **NOTING** that the Prosecutor charges **RASKA LUKWIYA** with a crime against humanity and war crimes, as specified in Counts 6 to 9 of his application, in connection with the attack on the REDACTED IDP Camp;

#### **Attack on REDACTED IDP Camp**

15. **NOTING** that the Prosecutor alleges that, on REDACTED 2003, "REDACTED fighters" attacked the REDACTED IDP Camp REDACTED, in the REDACTED District, abducted civilians and forced them to carry looted items; that, according to Ugandan authorities, the attack resulted in the death

of REDACTED civilians and in the abduction of REDACTED civilians, REDACTED;

16. **NOTING** that the evidence submitted, including accounts from REDACTED and intercepted radio communications, suggests that **RASKA LUKWIYA** was the most senior LRA commander to receive orders from Vincent Otti before the attack on the REDACTED IDP Camp; that **RASKA LUKWIYA** proceeded to the scene of the attack and commanded the LRA forces that were present; and that accounts from REDACTED confirm **RASKA LUKWIYA**'s presence during the attack;
17. **NOTING** article 58 and article 19 of the Statute of the Court (the "Statute");
18. **NOTING** the letter of referral dated the 16<sup>th</sup> day of December 2003 from the Attorney General of the Republic of Uganda, appended as Exhibit A to the Prosecutor's application, by which the "situation concerning the Lord's Resistance Army" in northern and western Uganda was submitted to the Court;
19. **NOTING** the Prosecutor's conclusion that "the scope of the referral encompassed all crimes committed in Northern Uganda in the context of the ongoing conflict involving the LRA" and that the Prosecutor notified the Government of Uganda of his conclusion as referred to in paragraph 1 of the Prosecutor's application;

20. **NOTING** the “Declaration on Temporal Jurisdiction”, dated the 27<sup>th</sup> day of February 2004, appended as Exhibit B to the Prosecutor’s application, whereby the Republic of Uganda accepted the exercise of the Court’s jurisdiction for crimes committed following the entry into force of the Statute on the 1<sup>st</sup> day of July 2002;
21. **NOTING** the “Letter on Jurisdiction” dated the 28<sup>th</sup> day of May 2004 from the Solicitor-General of the Republic Uganda to the Prosecutor, appended as Exhibit C to the Prosecutor’s application;
22. **NOTING** that all of the crimes alleged against **RASKA LUKWIYA** fall within the provisions of articles 5, 7 and 8 of the Statute, and that such crimes are alleged to have taken place after the 1<sup>st</sup> day of July 2002 and within the context of the situation in Uganda as referred to the Court;
23. **NOTING** the Prosecutor’s determination that the requirements of article 53, paragraph 1, of the Statute were satisfied;
24. **NOTING** that the Prosecutor affirms in paragraph 3 of the application that letters of notification were distributed to “all States parties under article 18, paragraph 1, of the Statute, as well as to other States that would normally exercise jurisdiction”; and that the Prosecutor had not received from any State information pursuant to article 18, paragraph 2, of the Statute;

25. **NOTING** the statements in the “Letter of Jurisdiction” dated the 28<sup>th</sup> day of May 2004, that “the Government of Uganda has been unable to arrest ... persons who may bear the greatest responsibility” for the crimes within the referred situation; that “the ICC is the most appropriate and effective forum for the investigation and prosecution of those bearing the greatest responsibility” for those crimes; and that the Government of Uganda “has not conducted and does not intend to conduct national proceedings in relation to the persons most responsible”;
26. **BEING SATISFIED** that, on the basis of the application, the evidence and other information submitted by the Prosecutor, and without prejudice to subsequent determination, the case against **RASKA LUKWIYA** falls within the jurisdiction of the Court and appears to be admissible;
27. **NOTING** articles 5, 7 and 8 of the Statute setting out crimes against humanity and war crimes; and noting also the Elements of Crimes;
28. **NOTING** the evidence submitted by the Prosecutor in support of the existence of the contextual elements of the alleged crimes;
29. **NOTING** that the Prosecutor relies on several categories of evidence to support the allegations made in his application;
30. **BEING SATISFIED**, on the basis of the application, the evidence and other information submitted by the Prosecutor, that there are reasonable grounds to



believe that **RASKA LUKWIYA**, together with other persons whose arrests are sought by the Prosecutor, ordered the commission of crimes within the jurisdiction of the Court, namely, a crime against humanity and war crimes, particulars of which are set out in the following counts as numbered in the Prosecutor's application:

#### **Count Six**

(Enslavement at REDACTED IDP Camp Constituting Crimes Against Humanity)

On REDACTED 2003, ordering the commission of crimes against humanity which in fact occurred, namely, the enslavement of REDACTED civilian residents of REDACTED IDP Camp, in REDACTED District, Uganda (articles 7(1)(c) and 25(3)(b) of the Statute);

#### **Count Seven**

(Cruel Treatment at REDACTED IDP Camp Constituting War Crimes)

On REDACTED 2003, ordering the commission of war crimes which in fact occurred, namely, the cruel treatment of civilian residents of REDACTED IDP Camp, by abducting them, tying or otherwise restraining them, and forcing them, under threat of death, to carry plundered property, in REDACTED District, Uganda (articles 8(2)(c)(i) and 25(3)(b) of the Statute);

#### **Count Eight**

(Attack Against the Civilian Population at REDACTED IDP Camp Constituting War Crime)

On REDACTED 2003, ordering the commission of a war crime which in fact occurred, namely, the intentional directing of attacks against the civilian population of REDACTED IDP Camp, in REDACTED District, Uganda, and against individual civilians not taking direct part in hostilities (articles 8(2)(e)(i) and 25(3)(b) of the Statute);

#### **Count Nine**

(Pillaging at REDACTED IDP Camp Constituting War Crimes)

On REDACTED 2003, ordering the commission of war crimes which in fact occurred, namely, the pillaging of REDACTED IDP Camp, in REDACTED District, Uganda (articles 8(2)(e)(v) and 25(3)(b) of the Statute);

31. **NOTING** the reasons advanced by the Prosecutor as to the necessity for arrest, namely, to ensure **RASKA LUKWIYA**'s appearance at trial; to ensure that he does not obstruct or endanger the investigation, either individually or on a collective basis; and to prevent him from continuing to commit crimes within the jurisdiction of the Court;
32. **BEING SATISFIED** that the issuance of a warrant of arrest appears necessary based on the facts and circumstances referred to in the Prosecutor's application, namely that the LRA has been in existence for the past 18 years; and that the LRA's commanders are allegedly inclined to launch retaliatory strikes, thus creating a risk for victims and witnesses who have spoken with or provided evidence to the Office of the Prosecutor;
33. **NOTING** the statements made by the Prosecutor at the hearings on the 16<sup>th</sup> day of June 2005 and the 21<sup>st</sup> day of June 2005 to the effect that attacks by the LRA are still occurring and that there is therefore a likelihood that failure to arrest **RASKA LUKWIYA** will result in the continuation of crimes of the kind described in the Prosecutor's application;
34. **NOTING** the Prosecutor's request that the application and all proceedings relating thereto be treated as under seal and be kept under seal;

**FOR THESE REASONS,**

35. **PRE-TRIAL CHAMBER II GRANTS** the Prosecutor's application for a warrant of arrest for **RASKA LUKWIYA** pursuant to article 58 of the Statute and **HEREBY ISSUES:**

36. **A WARRANT OF ARREST** (the "Warrant") for the **SEARCH, ARREST, DETENTION AND SURRENDER** to the Court of **RASKA LUKWIYA**, a male whose photograph is annexed; who is believed to have served in the LRA successively as Brigade General, Deputy Army Commander and Army Commander, the latter being the third highest position within the LRA; and who is believed to be a national of Uganda from the Gulu District, Uganda;

37. **ORDERS** that the said **RASKA LUKWIYA** be advised at the time of his arrest, and in a language he fully understands and speaks, of his rights as set forth in the following provisions of the Statute and the Rules of Procedure and Evidence, the texts of which are annexed to the Warrant:

- article 19, paragraph 2 (challenges to the jurisdiction of the Court or the admissibility of a case);
- article 55, paragraph 2 (rights of persons during an investigation);
- article 57 (functions and powers of the Pre-Trial Chamber);
- article 59 (arrest proceedings in the custodial State);
- article 60 (initial proceedings before the Court);
- article 61 (confirmation of the charges before trial);

- article 67 (rights of the accused);
- rule 21 (assignment of legal assistance);
- rule 112 (recording of questioning in particular cases);
- rule 117 (detention in the custodial State);
- rule 118 (pre-trial detention at the seat of the Court);
- rule 119 (conditional release);
- rule 120 (instruments of restraint);
- rule 121 (proceedings before the confirmation hearing);
- rule 122 (proceedings at the confirmation hearing in the presence of the person charged);
- rule 123 (measures to ensure the presence of the person concerned at the confirmation hearing);
- rule 124 (waiver of the right to be present at the confirmation hearing);
- rule 187 (translation of documents accompanying request for surrender);

38. **ORDERS** that the Warrant shall remain in effect until further order by the Chamber;

39. **AUTHORISES** the Warrant to be made available and disclosed to persons or entities designated by the authorities of the State requested in the Request for Arrest and Surrender and only for the purposes of the execution of the Warrant;

40. **ORDERS** that the Warrant, in all other respects, be kept under seal until further order by the Chamber;

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

*signed*

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**Judge Tuiloma Neroni Slade**  
**Presiding Judge**

*signed*

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**Judge Mauro Politi**

*signed*

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**Judge Fatoumata Dembele Diarra**

Dated this 8<sup>th</sup> day of July 2005

At The Hague, The Netherlands

**Seal of the Court**

**Cour  
Pénale  
Internationale**  

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**Before: Judge Tuiloma Neroni Slade**

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**Registrar: Mr Bruno Cathala**

**SITUATION IN UGANDA**

**Under Seal**

**Ex Parte, Prosecutor Only**

**ANNEXES TO WARRANT OF ARREST FOR RASKA LUKWIYA**

**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

**ANNEX 1: PHOTOGRAPH OF RASKA LUKWIYA, TAKEN FROM EXHIBIT H  
OF THE PROSECUTOR'S APPLICATION**



## **ANNEX 2: RELEVANT PROVISIONS OF THE STATUTE OF THE COURT AND OF THE RULES OF PROCEDURE AND EVIDENCE CONCERNING THE RIGHTS OF A PERSON WHOSE ARREST IS SOUGHT**

### **Article 19**

#### **Challenges to the jurisdiction of the Court or the admissibility of a case**

1. The Court shall satisfy itself that it has jurisdiction in any case brought before it. The Court may, on its own motion, determine the admissibility of a case in accordance with article 17.
2. Challenges to the admissibility of a case on the grounds referred to in article 17 or challenges to the jurisdiction of the Court may be made by:
  - (a) An accused or a person for whom a warrant of arrest or a summons to appear has been issued under article 58;
  - (b) A State which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted; or
  - (c) A State from which acceptance of jurisdiction is required under article 12.
3. The Prosecutor may seek a ruling from the Court regarding a question of jurisdiction or admissibility. In proceedings with respect to jurisdiction or admissibility, those who have referred the situation under article 13, as well as victims, may also submit observations to the Court.
4. The admissibility of a case or the jurisdiction of the Court may be challenged only once by any person or State referred to in paragraph 2. The challenge shall take place prior to or at the commencement of the trial. In exceptional circumstances, the Court may grant leave for a challenge to be brought more than once or at a time later than the commencement of the trial. Challenges to the admissibility of a case, at the commencement of a trial, or subsequently with the leave of the Court, may be based only on article 17, paragraph 1 (c).
5. A State referred to in paragraph 2 (b) and (c) shall make a challenge at the earliest opportunity.
6. Prior to the confirmation of the charges, challenges to the admissibility of a case or challenges to the jurisdiction of the Court shall be referred to the Pre-Trial Chamber. After confirmation of the charges, they shall be referred to the Trial Chamber. Decisions with respect to jurisdiction or admissibility may be appealed to the Appeals Chamber in accordance with article 82
7. If a challenge is made by a State referred to in paragraph 2 (b) or (c), the Prosecutor shall suspend the investigation until such time as the Court makes a determination in accordance with article 17.
8. Pending a ruling by the Court, the Prosecutor may seek authority from the Court:
  - (a) To pursue necessary investigative steps of the kind referred to in article 18, paragraph 6;
  - (b) To take a statement or testimony from a witness or complete the collection and examination of evidence which had begun prior to the making of the challenge; and
  - (c) In cooperation with the relevant States, to prevent the absconding of persons in respect of whom the Prosecutor has already requested a warrant of arrest under article 58.
9. The making of a challenge shall not affect the validity of any act performed by the Prosecutor or any order or warrant issued by the Court prior to the making of the challenge.
10. If the Court has decided that a case is inadmissible under article 17, the Prosecutor may submit a request for a review of the decision when he or she is fully satisfied that new facts have arisen which negate the basis on which the case had previously been found inadmissible under article 17.
11. If the Prosecutor, having regard to the matters referred to in article 17, defers an investigation, the Prosecutor may request that the relevant State make available to the Prosecutor information on the proceedings. That information shall, at the request of the State concerned, be confidential. If the Prosecutor



thereafter decides to proceed with an investigation, he or she shall notify the State to which deferral of the proceedings has taken place.

#### **Article 55**

##### **Rights of persons during an investigation**

1. In respect of an investigation under this Statute, a person:

- (a) Shall not be compelled to incriminate himself or herself or to confess guilt;
- (b) Shall not be subjected to any form of coercion, duress or threat, to torture or to any other form of cruel, inhuman or degrading treatment or punishment;
- (c) Shall, if questioned in a language other than a language the person fully understands and speaks, have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness; and
- (d) Shall not be subjected to arbitrary arrest or detention, and shall not be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established in this Statute.

2. Where there are grounds to believe that a person has committed a crime within the jurisdiction of the Court and that person is about to be questioned either by the Prosecutor, or by national authorities pursuant to a request made under Part 9, that person shall also have the following rights of which he or she shall be informed prior to being questioned:

- (a) To be informed, prior to being questioned, that there are grounds to believe that he or she has committed a crime within the jurisdiction of the Court;
- (b) To remain silent, without such silence being a consideration in the determination of guilt or innocence;
- (c) To have legal assistance of the person's choosing, or, if the person does not have legal assistance, to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by the person in any such case if the person does not have sufficient means to pay for it; and
- (d) To be questioned in the presence of counsel unless the person has voluntarily waived his or her right to counsel.

#### **Article 57**

##### **Functions and powers of the Pre-Trial Chamber**

1. Unless otherwise provided in this Statute, the Pre-Trial Chamber shall exercise its functions in accordance with the provisions of this article.

2. (a) Orders or rulings of the Pre-Trial Chamber issued under articles 15, 18, 19, 54, paragraph 2, 61, paragraph 7, and 72 must be concurred in by a majority of its judges.

(b) In all other cases, a single judge of the Pre-Trial Chamber may exercise the functions provided for in this Statute, unless otherwise provided for in the Rules of Procedure and Evidence or by a majority of the Pre-Trial Chamber.

3. In addition to its other functions under this Statute, the Pre-Trial Chamber may:

- (a) At the request of the Prosecutor, issue such orders and warrants as may be required for the purposes of an investigation;
- (b) Upon the request of a person who has been arrested or has appeared pursuant to a summons under article 58, issue such orders, including measures such as those described in article 56, or seek such cooperation pursuant to Part 9 as may be necessary to assist the person in the preparation of his or her defence;

(c) Where necessary, provide 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;

(d) Authorize the Prosecutor to take specific investigative steps within the territory of a State Party without having secured the cooperation of that State under Part 9 if, whenever possible having regard to the views of the State concerned, the Pre-Trial Chamber has determined in that case that the State is clearly unable to execute a request for cooperation due to the unavailability of any authority or any component of its judicial system competent to execute the request for cooperation under Part 9.

(e) Where a warrant of arrest or a summons has been issued under article 58, and having due regard to the strength of the evidence and the rights of the parties concerned, as provided for in this Statute and the Rules of Procedure and Evidence, seek the cooperation of States pursuant to article 93, paragraph 1 (k), to take protective measures for the purpose of forfeiture, in particular for the ultimate benefit of victims.

## **Article 59**

### **Arrest proceedings in the custodial State**

1. A State Party which has received a request for provisional arrest or for arrest and surrender shall immediately take steps to arrest the person in question in accordance with its laws and the provisions of Part 9.

2. A person arrested shall be brought promptly before the competent judicial authority in the custodial State which shall determine, in accordance with the law of that State, that:

(a) The warrant applies to that person;

(b) The person has been arrested in accordance with the proper process; and

(c) The person's rights have been respected.

3. The person arrested shall have the right to apply to the competent authority in the custodial State for interim release pending surrender.

4. In reaching a decision on any such application, the competent authority in the custodial State shall consider whether, given the gravity of the alleged crimes, there are urgent and exceptional circumstances to justify interim release and whether necessary safeguards exist to ensure that the custodial State can fulfil its duty to surrender the person to the Court. It shall not be open to the competent authority of the custodial State to consider whether the warrant of arrest was properly issued in accordance with article 58, paragraph 1 (a) and (b).

5. The Pre-Trial Chamber shall be notified of any request for interim release and shall make recommendations to the competent authority in the custodial State. The competent authority in the custodial State shall give full consideration to such recommendations, including any recommendations on measures to prevent the escape of the person, before rendering its decision.

6. If the person is granted interim release, the Pre-Trial Chamber may request periodic reports on the status of the interim release.

7. Once ordered to be surrendered by the custodial State, the person shall be delivered to the Court as soon as possible.

## **Article 60**

### **Initial proceedings before the Court**

1. Upon the surrender of the person to the Court, or the person's appearance before the Court voluntarily or pursuant to a summons, the Pre-Trial Chamber shall satisfy itself that the person has been informed of the crimes which he or she is alleged to have committed, and of his or her rights under this Statute, including the right to apply for interim release pending trial.

2. A person subject to a warrant of arrest may apply for interim release pending trial. If the Pre-Trial Chamber is satisfied that the conditions set forth in article 58, paragraph 1, are met, the person shall continue to be detained. If it is not so satisfied, the Pre-Trial Chamber shall release the person, with or without conditions.

3. The Pre-Trial Chamber shall periodically review its ruling on the release or detention of the person, and may do so at any time on the request of the Prosecutor or the person. Upon such review, it may modify its ruling as to detention, release or conditions of release, if it is satisfied that changed circumstances so require.

4. The Pre-Trial Chamber shall ensure that a person is not detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor. If such delay occurs, the Court shall consider releasing the person, with or without conditions.

5. If necessary, the Pre-Trial Chamber may issue a warrant of arrest to secure the presence of a person who has been released.

#### **Article 61**

##### **Confirmation of the charges before trial**

1. Subject to the provisions of paragraph 2, within a reasonable time after the person's surrender or voluntary appearance before the Court, the Pre-Trial Chamber shall hold a hearing to confirm the charges on which the Prosecutor intends to seek trial. The hearing shall be held in the presence of the Prosecutor and the person charged, as well as his or her counsel.

2. The Pre-Trial Chamber may, upon request of the Prosecutor or on its own motion, hold a hearing in the absence of the person charged to confirm the charges on which the Prosecutor intends to seek trial when the person has:

(a) Waived his or her right to be present; or

(b) Fled or cannot be found and all reasonable steps have been taken to secure his or her appearance before the Court and to inform the person of the charges and that a hearing to confirm those charges will be held.

In that case, the person shall be represented by counsel where the Pre-Trial Chamber determines that it is in the interests of justice.

3. Within a reasonable time before the hearing, the person shall:

(a) Be provided with a copy of the document containing the charges on which the Prosecutor intends to bring the person to trial; and

(b) Be informed of the evidence on which the Prosecutor intends to rely at the hearing.

The Pre-Trial Chamber may issue orders regarding the disclosure of information for the purposes of the hearing.

4. Before the hearing, the Prosecutor may continue the investigation and may amend or withdraw any charges. The person shall be given reasonable notice before the hearing of any amendment to or withdrawal of charges. In case of a withdrawal of charges, the Prosecutor shall notify the Pre-Trial Chamber of the reasons for the withdrawal.

5. At the hearing, the Prosecutor shall support each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crime charged. The Prosecutor may rely on documentary or summary evidence and need not call the witnesses expected to testify at the trial

6. At the hearing, the person may:

(a) Object to the charges;

(b) Challenge the evidence presented by the Prosecutor; and

(c) Present evidence.

7. The Pre-Trial Chamber shall, on the basis of the hearing, determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged. Based on its determination, the Pre-Trial Chamber shall:

- (a) Confirm those charges in relation to which it has determined that there is sufficient evidence, and commit the person to a Trial Chamber for trial on the charges as confirmed;
- (b) Decline to confirm those charges in relation to which it has determined that there is insufficient evidence;
- (c) Adjourn the hearing and request the Prosecutor to consider:
  - (i) Providing further evidence or conducting further investigation with respect to a particular charge; or
  - (ii) Amending a charge because the evidence submitted appears to establish a different crime within the jurisdiction of the Court.

8. Where the Pre-Trial Chamber declines to confirm a charge, the Prosecutor shall not be precluded from subsequently requesting its confirmation if the request is supported by additional evidence.

9. After the charges are confirmed and before the trial has begun, the Prosecutor may, with the permission of the Pre-Trial Chamber and after notice to the accused, amend the charges. If the Prosecutor seeks to add additional charges or to substitute more serious charges, a hearing under this article to confirm those charges must be held. After commencement of the trial, the Prosecutor may, with the permission of the Trial Chamber, withdraw the charges.

10. Any warrant previously issued shall cease to have effect with respect to any charges which have not been confirmed by the Pre-Trial Chamber or which have been withdrawn by the Prosecutor.

11. Once the charges have been confirmed in accordance with this article, the Presidency shall constitute a Trial Chamber which, subject to paragraph 9 and to article 64, paragraph 4, shall be responsible for the conduct of subsequent proceedings and may exercise any function of the Pre-Trial Chamber that is relevant and capable of application in those proceedings.

#### **Article 67**

##### **Rights of the accused**

1. In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks;
- (b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence;
- (c) To be tried without undue delay;
- (d) Subject to article 63, paragraph 2, to be present at the trial, to conduct the defence in person or through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court in any case where the interests of justice so require, and without payment if the accused lacks sufficient means to pay for it;
- (e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her. The accused shall also be entitled to raise defences and to present other evidence admissible under this Statute;

(f) To have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings or documents presented to the Court are not in a language which the accused fully understands and speaks;

(g) Not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence;

(h) To make an unsworn oral or written statement in his or her defence; and

(i) Not to have imposed on him or her any reversal of the burden of proof or any onus of rebuttal.

2. In addition to any other disclosure provided for in this Statute, the Prosecutor shall, as soon as practicable, disclose to the defence evidence in the Prosecutor's possession or control which he or she believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence. In case of doubt as to the application of this paragraph, the Court shall decide.

### **Rule 21**

#### **Assignment of legal assistance**

1. Subject to article 55, paragraph 2 (c), and article 67, paragraph 1 (d), criteria and procedures for assignment of legal assistance shall be established in the Regulations, based on a proposal by the Registrar, following consultations with any independent representative body of counsel or legal associations, as referred to in rule 20, sub-rule 3.

2. The Registrar shall create and maintain a list of counsel who meet the criteria set forth in rule 22 and the Regulations. The person shall freely choose his or her counsel from this list or other counsel who meets the required criteria and is willing to be included in the list.

3. A person may seek from the Presidency a review of a decision to refuse a request for assignment of counsel. The decision of the Presidency shall be final. If a request is refused, a further request may be made by a person to the Registrar, upon showing a change in circumstances.

4. A person choosing to represent himself or herself shall so notify the Registrar in writing at the first opportunity.

5. Where a person claims to have insufficient means to pay for legal assistance and this is subsequently found not to be so, the Chamber dealing with the case at that time may make an order of contribution to recover the cost of providing counsel.

### **Rule 112**

#### **Recording of questioning in particular cases**

1. Whenever the Prosecutor questions a person to whom article 55, paragraph 2, applies, or for whom a warrant of arrest or a summons to appear has been issued under article 58, paragraph 7, the questioning shall be audio- or video-recorded, in accordance with the following procedure:

(a) The person questioned shall be informed, in a language he or she fully understands and speaks, that the questioning is to be audio- or video-recorded, and that the person concerned may object if he or she so wishes. The fact that this information has been provided and the response given by the person concerned shall be noted in the record. The person may, before replying, speak in private with his or her counsel, if present. If the person questioned refuses to be audio- or video-recorded, the procedure in rule 111 shall be followed;

(b) A waiver of the right to be questioned in the presence of counsel shall be recorded in writing and, if possible, be audio- or video-recorded;

(c) In the event of an interruption in the course of questioning, the fact and the time of the interruption shall be recorded before the audio- or video-recording ends as well as the time of resumption of the questioning;

(d) At the conclusion of the questioning, the person questioned shall be offered the opportunity to clarify anything he or she has said and to add anything he or she may wish. The time of conclusion of the questioning shall be noted;

(e) The tape shall be transcribed as soon as practicable after the conclusion of the questioning and a copy of the transcript supplied to the person questioned together with a copy of the recorded tape or, if multiple recording apparatus was used, one of the original recorded tapes;

(f) The original tape or one of the original tapes shall be sealed in the presence of the person questioned and his or her counsel, if present, under the signature of the Prosecutor and the person questioned and the counsel, if present.

2. The Prosecutor shall make every reasonable effort to record the questioning in accordance with sub-rule

1. As an exception, a person may be questioned without the questioning being audio- or video-recorded where the circumstances prevent such recording taking place. In this case, the reasons for not recording the questioning shall be stated in writing and the procedure in rule 111 shall be followed.

3. When, pursuant to sub-rule 1 (a) or 2, the questioning is not audio- or video-recorded, the person questioned shall be provided with a copy of his or her statement.

4. The Prosecutor may choose to follow the procedure in this rule when questioning other persons than those mentioned in sub-rule 1, in particular where the use of such procedures could assist in reducing any subsequent traumatization of a victim of sexual or gender violence, a child or a person with disabilities in providing their evidence. The Prosecutor may make an application to the relevant Chamber.

5. The Pre-Trial Chamber may, in pursuance of article 56, paragraph 2, order that the procedure in this rule be applied to the questioning of any person.

#### **Rule 117**

##### **Detention in the custodial State**

1. The Court shall take measures to ensure that it is informed of the arrest of a person in response to a request made by the Court under article 89 or 92. Once so informed, the Court shall ensure that the person receives a copy of the arrest warrant issued by the Pre-Trial Chamber under article 58 and any relevant provisions of the Statute. The documents shall be made available in a language that the person fully understands and speaks.

2. At any time after arrest, the person may make a request to the Pre-Trial Chamber for the appointment of counsel to assist with proceedings before the Court and the Pre-Trial Chamber shall take a decision on such request.

3. A challenge as to whether the warrant of arrest was properly issued in accordance with article 58, paragraph 1 (a) and (b), shall be made in writing to the Pre-Trial Chamber. The application shall set out the basis for the challenge. After having obtained the views of the Prosecutor, the Pre-Trial Chamber shall decide on the application without delay

4. When the competent authority of the custodial State notifies the Pre-Trial Chamber that a request for release has been made by the person arrested, in accordance with article 59, paragraph 5, the Pre-Trial Chamber shall provide its recommendations within any time limit set by the custodial State.

5. When the Pre-Trial Chamber is informed that the person has been granted interim release by the competent authority of the custodial State, the Pre-Trial Chamber shall inform the custodial State how and when it would like to receive periodic reports on the status of the interim release.

### **Rule 118**

#### **Pre-trial detention at the seat of the Court**

1. If the person surrendered to the Court makes an initial request for interim release pending trial, either upon first appearance in accordance with rule 121 or subsequently, the Pre-Trial Chamber shall decide upon the request without delay, after seeking the views of the Prosecutor.
2. The Pre-Trial Chamber shall review its ruling on the release or detention of a person in accordance with article 60, paragraph 3, at least every 120 days and may do so at any time on the request of the person or the Prosecutor.
3. After the first appearance, a request for interim release must be made in writing. The Prosecutor shall be given notice of such a request. The Pre-Trial Chamber shall decide after having received observations in writing of the Prosecutor and the detained person. The Pre-Trial Chamber may decide to hold a hearing, at the request of the Prosecutor or the detained person or on its own initiative. A hearing must be held at least once every year.

### **Rule 119**

#### **Conditional release**

1. The Pre-Trial Chamber may set one or more conditions restricting liberty, including the following:
  - (a) The person must not travel beyond territorial limits set by the Pre-Trial Chamber without the explicit agreement of the Chamber;
  - (b) The person must not go to certain places or associate with certain persons as specified by the Pre-Trial Chamber;
  - (c) The person must not contact directly or indirectly victims or witnesses;
  - (d) The person must not engage in certain professional activities;
  - (e) The person must reside at a particular address as specified by the Pre-Trial Chamber;
  - (f) The person must respond when summoned by an authority or qualified person designated by the Pre-Trial Chamber;
  - (g) The person must post bond or provide real or personal security or surety, for which the amount and the schedule and mode of payment shall be determined by the Pre-Trial Chamber;
  - (h) The person must supply the Registrar with all identity documents, particularly his or her passport.
2. At the request of the person concerned or the Prosecutor or on its own initiative, the Pre-Trial Chamber may at any time decide to amend the conditions set pursuant to sub-rule 1.
3. Before imposing or amending any conditions restricting liberty, the Pre-Trial Chamber shall seek the views of the Prosecutor, the person concerned, any relevant State and victims that have communicated with the Court in that case and whom the Chamber considers could be at risk as a result of a release or conditions imposed.
4. If the Pre-Trial Chamber is convinced that the person concerned has failed to comply with one or more of the obligations imposed, it may, on such basis, at the request of the Prosecutor or on its own initiative, issue a warrant of arrest in respect of the person.
5. When the Pre-Trial Chamber issues a summons to appear pursuant to article 58, paragraph 7, and intends to set conditions restricting liberty, it shall ascertain the relevant provisions of the national law of the State receiving the summons. In a manner that is in keeping with the national law of the State receiving the summons, the Pre-Trial Chamber shall proceed in accordance with sub-rules 1, 2 and 3. If the Pre-Trial Chamber receives information that the person concerned has failed to comply with conditions imposed, it shall proceed in accordance with sub-rule 4.

## **Rule 120**

### **Instruments of restraint**

Personal instruments of restraint shall not be used except as a precaution against escape, for the protection of the person in the custody of the Court and others or for other security reasons, and shall be removed when the person appears before a Chamber.

## **Rule 121**

### **Proceedings before the confirmation hearing**

1. A person subject to a warrant of arrest or a summons to appear under article 58 shall appear before the Pre-Trial Chamber, in the presence of the Prosecutor, promptly upon arriving at the Court. Subject to the provisions of articles 60 and 61, the person shall enjoy the rights set forth in article 67. At this first appearance, the Pre-Trial Chamber shall set the date on which it intends to hold a hearing to confirm the charges. It shall ensure that this date, and any postponements under sub-rule 7, are made public.

2. In accordance with article 61, paragraph 3, the Pre-Trial Chamber shall take the necessary decisions regarding disclosure between the Prosecutor and the person in respect of whom a warrant of arrest or a summons to appear has been issued. During disclosure:

(a) The person concerned may be assisted or represented by the counsel of his or her choice or by a counsel assigned to him or her;

(b) The Pre-Trial Chamber shall hold status conferences to ensure that disclosure takes place under satisfactory conditions. For each case, a judge of the Pre-Trial Chamber shall be appointed to organize such status conferences, on his or her own motion, or at the request of the Prosecutor or the person;

(c) All evidence disclosed between the Prosecutor and the person for the purposes of the confirmation hearing shall be communicated to the Pre-Trial Chamber.

3. The Prosecutor shall provide to the Pre-Trial Chamber and the person, no later than 30 days before the date of the confirmation hearing, a detailed description of the charges together with a list of the evidence which he or she intends to present at the hearing.

4. Where the Prosecutor intends to amend the charges pursuant to article 61, paragraph 4, he or she shall notify the Pre-Trial Chamber and the person no later than 15 days before the date of the hearing of the amended charges together with a list of evidence that the Prosecutor intends to bring in support of those charges at the hearing.

5. Where the Prosecutor intends to present new evidence at the hearing, he or she shall provide the Pre-Trial Chamber and the person with a list of that evidence no later than 15 days before the date of the hearing.

6. If the person intends to present evidence under article 61, paragraph 6, he or she shall provide a list of that evidence to the Pre-Trial Chamber no later than 15 days before the date of the hearing. The Pre-Trial Chamber shall transmit the list to the Prosecutor without delay. The person shall provide a list of evidence that he or she intends to present in response to any amended charges or a new list of evidence provided by the Prosecutor.

7. The Prosecutor or the person may ask the Pre-Trial Chamber to postpone the date of the confirmation hearing. The Pre-Trial Chamber may also, on its own motion, decide to postpone the hearing.

8. The Pre-Trial Chamber shall not take into consideration charges and evidence presented after the time limit, or any extension thereof, has expired.

9. The Prosecutor and the person may lodge written submissions with the Pre-Trial Chamber, on points of fact and on law, including grounds for excluding criminal responsibility set forth in article 31, paragraph 1, no later than three days before the date of the hearing. A copy of these submissions shall be transmitted immediately to the Prosecutor or the person, as the case may be.



10. The Registry shall create and maintain a full and accurate record of all proceedings before the Pre-Trial Chamber, including all documents transmitted to the Chamber pursuant to this rule. Subject to any restrictions concerning confidentiality and the protection of national security information, the record may be consulted by the Prosecutor, the person and victims or their legal representatives participating in the proceedings pursuant to rules 89 to 91.

#### **Rule 122**

##### **Proceedings at the confirmation hearing in the presence of the person charged**

1. The Presiding Judge of the Pre-Trial Chamber shall ask the officer of the Registry assisting the Chamber to read out the charges as presented by the Prosecutor. The Presiding Judge shall determine how the hearing is to be conducted and, in particular, may establish the order and the conditions under which he or she intends the evidence contained in the record of the proceedings to be presented.
2. If a question or challenge concerning jurisdiction or admissibility arises, rule 58 applies.
3. Before hearing the matter on the merits, the Presiding Judge of the Pre-Trial Chamber shall ask the Prosecutor and the person whether they intend to raise objections or make observations concerning an issue related to the proper conduct of the proceedings prior to the confirmation hearing.
4. At no subsequent point may the objections and observations made under sub-rule 3 be raised or made again in the confirmation or trial proceedings.
5. If objections or observations referred to in sub-rule 3 are presented, the Presiding Judge of the Pre-Trial Chamber shall invite those referred to in sub-rule 3 to present their arguments, in the order which he or she shall establish. The person shall have the right to reply.
6. If the objections raised or observations made are those referred to in sub-rule 3, the Pre-Trial Chamber shall decide whether to join the issue raised with the examination of the charges and the evidence, or to separate them, in which case it shall adjourn the confirmation hearing and render a decision on the issues raised.
7. During the hearing on the merits, the Prosecutor and the person shall present their arguments in accordance with article 61, paragraphs 5 and 6.
8. The Pre-Trial Chamber shall permit the Prosecutor and the person, in that order, to make final observations.
9. Subject to the provisions of article 61, article 69 shall apply *mutatis mutandis* at the confirmation hearing.

#### **Rule 123**

##### **Measures to ensure the presence of the person concerned at the confirmation hearing**

1. When a warrant of arrest or summons to appear in accordance with article 58, paragraph 7, has been issued for a person by the Pre-Trial Chamber and the person is arrested or served with the summons, the Pre-Trial Chamber shall ensure that the person is notified of the provisions of article 61, paragraph 2.
2. The Pre-Trial Chamber may hold consultations with the Prosecutor, at the request of the latter or on its own initiative, in order to determine whether there is cause to hold a hearing on confirmation of charges under the conditions set forth in article 61, paragraph 2 (b). When the person concerned has a counsel known to the Court, the consultations shall be held in the presence of the counsel unless the Pre-Trial Chamber decides otherwise.
3. The Pre-Trial Chamber shall ensure that a warrant of arrest for the person concerned has been issued and, if the warrant of arrest has not been executed within a reasonable period of time after the issuance of the warrant, that all reasonable measures have been taken to locate and arrest the person.

#### **Rule 124**

##### **Waiver of the right to be present at the confirmation hearing**

1. If the person concerned is available to the Court but wishes to waive the right to be present at the hearing on confirmation of charges, he or she shall submit a written request to the Pre-Trial Chamber, which may then hold consultations with the Prosecutor and the person concerned, assisted or represented by his or her counsel.
2. A confirmation hearing pursuant to article 61, paragraph 2 (a), shall only be held when the Pre-Trial Chamber is satisfied that the person concerned understands the right to be present at the hearing and the consequences of waiving this right.
3. The Pre-Trial Chamber may authorize and make provision for the person to observe the hearing from outside the courtroom through the use of communications technology, if required.
4. The waiving of the right to be present at the hearing does not prevent the Pre-Trial Chamber from receiving written observations on issues before the Chamber from the person concerned.

#### **Rule 187**

##### **Translation of documents accompanying request for surrender**

For the purposes of article 67, paragraph 1 (a), and in accordance with rule 117, sub-rule 1, the request under article 91 shall be accompanied, as appropriate, by a translation of the warrant of arrest or of the judgment of conviction and by a translation of the text of any relevant provisions of the Statute, in a language that the person fully understands and speaks.