

**Cour
Pénale
Internationale**

**International
Criminal
Court**

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

Date: 2 December 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 TO CONVENE A STATUS CONFERENCE ON THE
INVESTIGATION IN THE SITUATION IN UGANDA IN RELATION TO THE
APPLICATION OF ARTICLE 53**

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** the letter of referral dated the 16th day of December 2003 by the Attorney General of Uganda, appended as Exhibit A to the Prosecutor’s application for warrants of arrest, by which the “situation concerning the Lord’s Resistance Army” in northern and western Uganda was submitted to the Court;
5. **NOTING** the Prosecutor’s conclusion that “the scope of the referral encompasses 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 for warrants of arrest;
6. **NOTING** the Chamber’s decision on the Prosecutor’s Application for Warrants of Arrest, dated the 8th day of July 2005, and the subsequent issuance of warrants of arrest for **Joseph KONY, Vincent OTTI, Raska LUKWIYA, Okot ODHIAMBO and Dominic ONGWEN**;

7. **NOTING** the statement made by the Prosecutor's representative at the status conference held on the 3rd day of October 2005 that the Office of the Prosecutor (the "OTP") does not "plan [...] to continue investigating the past crimes"¹, 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;

8. **NOTING** also the statement made by the Prosecutor at the Informal Meeting of Legal Advisors of Ministries of Foreign Affairs on the 24th day of October 2005 that the investigation in the situation in Uganda "is nearing completion"² and that "the interpretation of Article 53 ... involves the OTP and ultimately the judges"³;

9. **NOTING** the Prosecutor's statement at the Fourth Session of the Assembly of States Parties that "[i]n Uganda, if new crimes are committed by other LRA commanders" the OTP may investigate those persons; that the OTP "will continue to evaluate information on all other groups" and that cases will be presented "if they reach the gravity standards of the Statute"⁴;

10. **RECALLING** article 54, paragraph 1 (a), of the Statute of the Court (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";

¹ See Hearing 3 October 2005, Transcript T-02/04-01/05-1-Conf-EN, p. 46-47.

² See ICC-02/04-01/05-67, p.3.

³ *Ibid.*, p. 11.

⁴ *Ibid.*, p. 29.

11. **NOTING** article 53, paragraphs 2 and 3, of the Statute and rule 106 of the Rules of Procedure and Evidence (the "Rules");

12. **RECALLING** the Chamber's request as contained in its decision dated the 13th day of October 2005 for 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";

13. **RECALLING** further that, under article 53, paragraph 3 (b), "a decision of the Prosecutor not to proceed if it is based solely on paragraph 1 (c) or 2 (c) ...shall be effective only if confirmed by the Pre-Trial Chamber";

14. **NOTING** regulation 48, pursuant to which the "Pre-Trial Chamber may request the Prosecutor to provide specific or additional information ... that the Pre-Trial Chamber considers necessary in order to exercise the functions and responsibilities set forth in article 53, paragraph 3 (b)";

15. **NOTING** also regulation 30 of the Regulations of the Court (the "Regulations") concerning status conferences;

16. **NOTING**, with respect to regulation 20, sub-regulation 2, of the Regulations, that the provision of specific or additional information on the above-mentioned

matters may entail the disclosure of sensitive and confidential information; and that such information should not be heard in public at this stage;

HAVING REGARD THERETO AND FOR THESE REASONS;

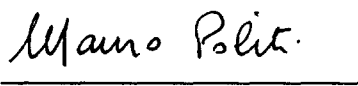
THE CHAMBER HEREBY:

17. **DECIDES**, pursuant to regulation 30 of the Regulations, to convene a status conference by way of a hearing in closed session to be held on the 14th day of December 2005 at 10 a.m. to be attended by the Prosecutor with a view to considering the status of the investigation in the situation in Uganda in relation to the application of Article 53.

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 2nd day of December 2005

At The Hague, The Netherlands

Seal of the Court