

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

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

Date: 8 November

PRE-TRIAL CHAMBER II

Before: Judge Mauro Politi, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Ekaterina Trendafilova

Registrar: Mr Bruno Cathala

**SITUATION IN UGANDA
IN THE CASE OF
THE PROSECUTOR**

v. JOSEPH KONY, VINCENT OTTI, OKOT ODHIAMBO, DOMINIC ONGWEN

Public Document

Decision to Convene a Status Conference on the Status of Cooperation for the Execution of the Warrants of Arrest in the Case of The Prosecutor v. Joseph KONY, Vincent OTTI, Okot ODHIAMBO and Dominic ONGWEN

The Office of the Prosecutor

Mr Luis Moreno Ocampo, Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor

Mr Eric Macdonald, Trial Lawyer

PRE-TRIAL CHAMBER II (the “Chamber”) of the International Criminal Court (the “Court”);

RECALLING the warrants of arrest for Joseph KONY issued by the Chamber on 8 July 2005 as amended on 27 September 2005,¹ and the warrants of arrest issued for Vincent OTTI,² Okot ODHIAMBO,³ and Dominic ONGWEN⁴ on 8 July 2005 (the “Warrants”);

RECALLING the requests for arrest and surrender to the Republic of Uganda dated 8 July 2005 and 27 September 2005,⁵ and the requests for arrest and surrender to the Democratic Republic of the Congo⁶ and the Republic of Sudan⁷ dated 27 September 2005 (the “Requests for Arrest and Surrender”);

RECALLING the determination of the Chamber in its Decision of 8 July 2005 that the issuance of the Warrants was necessary to ensure that the persons sought would not obstruct or endanger the investigation or the Court proceedings, to ensure their appearance at trial and to prevent the continuation of the crimes or the commission of related crimes within the jurisdiction of the Court;

¹ ICC-02/04-01/05-53

² ICC-02/04-01/05-54.

³ ICC-02/04-01/05-56.

⁴ ICC-02/04-01/05-57.

⁵ ICC-02/04-01/05-29-US-Exp, ICC-02/04-01/05-13-US-Exp, ICC-02/04-01/05-15-US-Exp, ICC-02/04-01/05-16-US-Exp, all reclassified as public pursuant to Decision ICC-02/04-01/05-135.

⁶ ICC-02/04-01/05-30-US-Exp, ICC-02/04-01/05-31-US-Exp, ICC-02/04-01/05-33-US-Exp, ICC-02/04-01/05-32-US-Exp, all reclassified as public pursuant to Decision ICC-02/04-01/05-135

⁷ ICC-02/04-01/05-35-US-Exp, ICC-02/04-01/05-36-US-Exp, ICC-02/04-01/05-38-US-Exp, ICC-02/04-01/05-37-US-Exp, all reclassified as public pursuant to Decision ICC-02/04-01/05-135.

RECALLING the Chamber's "*Order to the Registrar and the Prosecutor for the submission of information on the status of the execution of the warrants of arrest in the situation in Uganda*", dated 15 September 2006;⁸

NOTING the Prosecutor's "*Submission of information on the status of the execution of the warrants of arrest in the Situation in Uganda*", dated 6 October 2006;⁹

NOTING the "*Rapport du Greffier sur l'état d'exécution des mandats d'arrêt dans la Situation en Ouganda*", dated 6 October 2006;¹⁰

NOTING the "*Rapport complémentaire du Greffier sur l'état d'exécution des mandats d'arrêt dans la Situation en Ouganda*" filed on 20 October 2006¹¹ in accordance with the Chamber's "*Order granting a new deadline to the Registrar for the submission of additional information and comments on the status of cooperation in the Situation in Uganda*" dated 13 October 2006;¹²

RECALLING the "*Order to the Prosecutor for the submission of additional information on the status of the execution of the warrants of arrest in the Situation in Uganda*", dated 30 November 2006;¹³

NOTING the Prosecutor's "*Submission of additional information on the status of the execution of the warrants of arrest in the Situation in Uganda*", dated 8 December 2006;¹⁴

⁸ ICC-02/04-01/05-111.

⁹ ICC-02/04-01/05-116-Corr2.

¹⁰ ICC-02/04-01/05-118.

¹¹ ICC-02/04-01/05-122.

¹² ICC-02/04-01/05-119.

¹³ ICC-02/04-01/05-131.

¹⁴ ICC-02/04-01/05-132.

NOTING the Prosecutor's "*Submission of Information Regarding Vincent Otti*", dated 8 November 2007;¹⁵

NOTING article 89 (1) of the Rome Statute of the Court (the "Statute"), setting forth the obligation of States Parties to comply with the Court's requests for arrest and surrender;

NOTING article 87 (7) of the Statute, according to which, when a State Party fails to comply with a request to cooperate, the Court may make a finding to that effect and refer the matter to the Assembly of States Parties;

NOTING article 87 (5) (b), of the Statute, according to which, where a State not party to the Statute which has entered into an *ad hoc* arrangement or agreement with the Court fails to cooperate with requests pursuant to any such arrangement or agreement, the Court may so inform the Assembly of States Parties;

NOTING regulation 46 (2) of the Regulations of the Court (the "Regulations"), according to which the Pre-Trial Chamber "shall be responsible for any matter, request or information arising out of the situation assigned to it";

NOTING articles 42 (1) and 54 (1) (b) of the Statute, specifying the general mandate of the Prosecutor and his power to take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court respectively;

¹⁵ ICC-02/04-01/05-258

NOTING article 54 (3) (c) of the Statute, which enables the Prosecutor to “seek the cooperation of any State or intergovernmental organization or arrangement in accordance with its respective competence and/or mandate”;

NOTING article 54 (3) (d) of the Statute, pursuant to which the Prosecutor may “enter into such arrangements or agreements, not inconsistent with this Statute, as may be necessary to facilitate the cooperation of a State, intergovernmental organization or person”;

NOTING articles 15 and 18 of the Negotiated Relationship Agreement between the Court and the United Nations (the “UN”), which govern cooperation between the UN and the Court, and cooperation between the UN and the Prosecutor respectively;

NOTING rule 176 (2) of the Rules of Procedure and Evidence of the Court (the “Rules”), according to which the Registrar “shall transmit the requests for cooperation made by the Chambers and shall receive the responses, information and documents from requested States”;

NOTING rule 184 of the Rules, providing that the surrender of the person(s) sought by the Court shall be a matter of arrangements between the requested State and the Registrar;

NOTING regulation 76 (c) of the Regulations of the Registry, pursuant to which the Registrar shall request national authorities to inform him without delay “of any problem that may impede or prevent the execution of the request for arrest and surrender”;

CONSIDERING that since the Prosecutor's and the Registrar's last submissions on the execution of the Warrants, dated 8 December 2006 and 20 October 2006 respectively, several events relevant to the Case in Uganda have occurred, in particular:

- i) the resumption of the peace talks between the LRA and the Government of Uganda on 26 April 2007, in Juba, under the mediation of the Government of South Sudan;
- ii) the conclusion of the "Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement" signed by the parties on 29 June 2007, which deals specifically with the issue of punishment of those responsible for the most serious crimes and human rights violations in Northern Uganda;
- iii) the reported meetings between UN officials, including the Special Representative of the Secretary-General of the UN, with the leaders of the LRA and with the Government of Uganda;¹⁶
- iv) the reported contact between the Office of the Prosecutor and the Office of the Secretary General of the UN and the President pro-tempore of the Security Council;¹⁷
- v) the statement made by the Ugandan Minister of Internal Affairs, Ruhakana Rugunda, according to which "Uganda will engage the International Criminal Court to seek a review of the indictments for war crime charges against leaders of the Lord's Resistance Army";¹⁸

¹⁶ See in particular Integrated Regional Information Networks (IRIN), *"Bid to restart peace talks"*, 12 March 2007; New Vision, *"Museveni cautions Congo over rebels"*, 16 April 2007 ; UN News Service, *"UN envoy to northern Uganda holds talks with regional leaders"*, 23 August 2007 ; UN News Service, *"Top UN Envoy for Northern Uganda continues visit in region"*, 27 August 2007.

¹⁷ See Press Releases ICC-OTP-20070817-235_En; ICC-CPI-200708294-238-En.

¹⁸ See IRIN, *"Government to seek review of ICC indictments against LRA leaders"*, 21 June 2007.

- vi) the statement made by the Ugandan Minister of State for Defense that a law to help the LRA to escape the Court is to be enacted by the parliament after the outcome of the peace consultations;¹⁹
- vii) the 8 September 2007 agreement between Uganda and the Democratic Republic of the Congo aimed at ceasing within 90 days the operations of 7 rebel groups, including the LRA;
- viii) the statement made by the Ugandan Minister of Foreign Affairs at the 62nd session of the UN General Assembly, according to which Uganda was “working closely” with the Court to “ensure accountability under the complementarity stipulations”;²⁰
- ix) the statement made by the Prosecutor at the 11th Diplomatic Briefing of the Court, expressing concern that the indicted LRA commanders had regained credibility, strength and financial means, and urging the international community and MONUC to support Uganda and the Democratic Republic of the Congo in their efforts to arrest the wanted commanders;²¹
- x) the confirmation, by an LRA commander who surrendered on 9 October 2007, of allegations that a rift has developed between Joseph Kony and Vincent Otti;²²
- xi) the persistent rumours suggesting the death of Vincent Otti.²³

¹⁹ See South African Press Association – Deutche Presse Agentur, “Law to save rebels from Hague”, 29 August 2007.

²⁰ UN News Service, 1 October 2007.

²¹ Eleventh Diplomatic Briefing of the International Criminal Court, Statement by the Prosecutor, 10 October 2007.

²² See The Monitor, “LRA rebel commander confirms Kony-Otti rift”, 1 November 2007; BBC News, “Uganda Rebels claim ‘not split’”, 23 October 2007.

²³ See New Vision, “LRA denies deputy chief Otti is dead”, 31 October; The Monitor “LRA denies Otti is dead”, 1 November 2007.

CONSIDERING the time elapsed since the issuance of the Warrants and the importance of their execution for the effective investigation and prosecution, as well as for the prevention of the commission of further crimes;

REITERATING that there is a need for the Chamber to receive a complete update on the status of the execution of the Warrants and of the Requests for Arrest and Surrender and of the ongoing cooperation with the relevant States and the UN, with a view to exercising its powers and fulfilling its duties, in particular under Part 9 of the Statute;

NOTING regulations 30 and 20 (2) of the Regulations;

CONSIDERING that the provision of 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**

DECIDES to hold a status conference in a closed session on 11 December 2007 at 3 p.m., to be attended by the Prosecutor and the Registrar, for a comprehensive assessment of the status of cooperation with the Court by the relevant States and the UN for the execution of the Warrants and of the Requests for Arrest and Surrender.

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

Mauro Politi

Judge Mauro Politi
Presiding Judge

Fatoumata Dembele Diarra

Judge Fatoumata Dembele Diarra

Ekaterina Trendafilova

Judge Ekaterina Trendafilova

Dated this 8 November 2007

At the Hague, The Netherlands