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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, RASKA LUKWITYA,
DOMINIC ONGWEN**

Public redacted version

**DECISION TO ISSUE REQUESTS FOR ARREST AND SURRENDER TO THE
CENTRAL AFRICAN REPUBLIC**

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”);

NOTING the Chamber’s “Decision on the Prosecutor’s Application for Warrants of Arrest under Article 58” dated 8 July 2005,¹ as well as the Chamber’s “Decision on the Prosecutor’s Urgent Application dated 26 September 2005”, dated 27 September 2005;²

NOTING the warrant of arrest for **JOSEPH KONY** issued by the Chamber on 8 July 2005³ as amended on 27 September 2005,⁴ and the warrants of arrest issued for **VINCENT OTTI**,⁵ **RASKA LUKWIYA**,⁶ **OKOT ODHIAMBO**⁷ and **DOMINIC ONGWEN**⁸ on 8 July 2005 (the “Warrants”);

NOTING the requests for arrest and surrender dated 8 July 2005 and 27 September 2005 to the Republic of Uganda,⁹ and the requests for arrest and surrender dated 27 September 2005 to the Democratic Republic of Congo¹⁰ and the Republic of Sudan (the “Requests”);¹¹

¹ ICC-02/04-01/05-1-US-Exp.

² ICC-02/04-01/05-27-US-Exp.

³ ICC-02/04-01/05-2-US-Exp.

⁴ ICC-02/04-01/05-28-US-Exp.

⁵ ICC-02/04-01/05-4-US-Exp.

⁶ ICC-02/04-01/05-6-US-Exp.

⁷ ICC-02/04-01/05-8-US-Exp.

⁸ ICC-02/04-01/05-10-US-Exp.

⁹ ICC-02/04-01/05-29-US-Exp, ICC-02/04-01/05-13-US-Exp, ICC-02/04-01/05-14-US-Exp, ICC-02/04-01/05-15-US-Exp, ICC-02/04-01/05-16-US-Exp.

¹⁰ ICC-02/04-01/05-30-US-Exp, ICC-02/04-01/05-31-US-Exp, ICC-02/04-01/05-32-US-Exp, ICC-02/04-01/05-33-US-Exp, ICC-02/04-01/05-34-US-Exp.

¹¹ ICC-02/04-01/05-35-US-Exp, ICC-02/04-01/05-36-US-Exp, ICC-02/04-01/05-37-US-Exp, ICC-02/04-01/05-38-US-Exp, ICC-02/04-01/05-39-US-Exp.

NOTING articles 57, paragraph 5, 87 and 89 of the Statute of the Court (“the Statute”), pursuant to which a request for the arrest and surrender of a person may be made and transmitted by the Court to any State on the territory of which that person may be found and the Court shall request the cooperation of that State in the arrest and surrender of such a person;

RECALLING that, pursuant to rule 176, sub-rule 2 of the Rules of Procedure and Evidence, the Chamber vested the Registrar with the transmission of the Warrants and the Requests to the relevant States;¹²

NOTING the “Order to the Registrar and the Prosecutor for the Submission of Information on the Reported Movement of Persons whose Arrest is Sought” dated 28 February 2007;¹³

NOTING

[REDACTED]

NOTING the Prosecutor’s “Submission of Information on the Reported Movement of Persons whose Arrest has been Sought” dated 7 March 2007,¹⁵ (the “Prosecutor’s Submission”) in which the Prosecutor submits that “notwithstanding the difficulty of confirming the presence in the Central African Republic of any of the persons whose

¹² ICC-02/04-01/05-1-US-Exp, p.9.

¹³ ICC-02/04-01/05-213-Conf-Exp.

¹⁴ [REDACTED]

¹⁵ ICC-02/04-01/05-218-US-Exp.

arrest has been sought, it would be appropriate for the Chamber to consider transmitting the requests to the Central African Republic;"

NOTING that in his Submission, the Prosecutor reports that the best available information from public and non-public sources is that a group of as many as 150 to 400 LRA members is now located within the Central African Republic (CAR) after having arrived there sometime in February 2007;¹⁶

NOTING further that the Prosecutor refers in his Submission to the LRA's demonstrated ability to quickly relocate, the proximity of the Garamba Park to the CAR, and to the fact that LRA forces continue to move far from Ri-Kwangba where they were to gather under the terms of the recently expired Cessation of Hostilities Agreement;¹⁷

NOTING that the Prosecutor submits that it would avoid any potential ambiguity about cooperation obligations, and thus serve the letter and spirit of article 89, paragraph 1 of the Statute, were the Chamber to order the transmission of requests for cooperation to the CAR before any person whose arrest is sought is confirmed to have located himself in the CAR;¹⁸

CONSIDERING that the information submitted to the Chamber thus far by the Registrar and the Prosecutor, as well as the media reports referring to the CAR as the presumed location of persons whose arrest is sought by the Court, constitute a reasonable basis for believing that the CAR is a territory on which **JOSEPH KONY, VINCENT OTTI, OKOT ODHIAMBO** and **DOMINIC ONGWEN** "may be found" within the meaning of article 89, paragraph 1 of the Statute;

¹⁶ ICC-02/04-01/05-218-US-Exp, para 2.

¹⁷ ICC-02/04-01/05-218-US-Exp, para 2.

¹⁸ ICC-02/04-01/05-218-US-Exp, para 3.

NOTING the “Submission of Information Regarding Raska Lukwiya” by the Prosecutor dated 14 August 2006¹⁹ and the forensic report of the Netherlands Forensic Institute prepared upon request by the government of Uganda and the Prosecutor, which concluded that there was “very strong evidence” that the human remains from the body of the person killed on 12 August 2006 originate from Raska Lukwiya”;²⁰

NOTING further the “Notice confirming the death of Raska Lukwiya” of the Solicitor-General of the Republic of Uganda dated 30 October 2006²¹ and the information provided in the Registrar’s Report that the Registrar requested a death certificate from the Ugandan authorities on 5 March 2007;²²

CONSIDERING it appropriate, in light of the information submitted to the Chamber regarding **RASKA LUKWIYA** and the request sent by the Registrar to the Ugandan authorities for a death certificate, to stay any decision related to **RASKA LUKWIYA**;

NOTING that the Prosecutor’s Submission was filed with the request that it be received as confidential and *ex parte* to the Prosecutor only but that the title page of the Submission did not specify the requested level of confidentiality such that it appears to have been registered as Under Seal;²³

CONSIDERING the need to preserve confidentiality concerning reported movements of persons whose arrest is sought in order to support arrest efforts;

¹⁹ ICC-02/04-01/05-97.

²⁰ ICC-02/04-01/05-126-US, Annex.

²¹ ICC-02/04-01/05-126-US, Annex.

²² ICC-02/04-01/05-217-US-Exp.

²³ Note that the registration stamp of the document is ICC-02/04-01/05-218-US-Exp.

FOR THESE REASONS

ISSUES requests for arrest and surrender of **JOSEPH KONY, VINCENT OTTI, OKOT ODHIAMBO** and **DOMINIC ONGWEN**, to be transmitted by the Registrar to the Central African Republic;

ORDERS that this decision, the requests for arrest and surrender and all documents relating thereto be classified as confidential, *ex parte*, Prosecutor only, under further order by the Chamber;

ORDERS that the Prosecutor's Submission be reclassified as Confidential, *ex parte*, Prosecutor only.

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

[signed]

Judge Mauro Politi
Presiding Judge

[signed]

Judge Fatoumata Dembele Diarra

[signed]

Judge Ekaterina Trendatlova

Dated this 21st day of March 2007

At The Hague (The Netherlands)