

**Cour
Pénale
Internationale**
**International
Criminal
Court**

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

Date: 11 January 2006

Original: English

PRE-TRIAL CHAMBER II

Before: Judge Tuiloma Neroni Slade, Presiding Judge
 Judge Fatoumata Dembele Diarra
 Judge Mauro Politi

Registrar: Mr Bruno Cathala

SITUATION IN UGANDA

Public Document

**OTP Submission Providing Information On Status of the Investigation In
 Anticipation of the Status Conference To Be Held on 13 January 2006**

The Office of the Prosecutor	
Mr. Luis Moreno Ocampo, Prosecutor Mrs. Fatou Bensouda, Deputy Prosecutor Ms. Christine Chung, Senior Trial Lawyer Mr. Fabricio Guariglia, Senior Appeals Counsel	

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

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Preliminary Statement

In light of the Decision of Pre-Trial Chamber II, dated 2 December 2005, to Convene a Status Conference on the Investigation in the Situation in Uganda in Relation to the Application of Article 53 (hereinafter, the "Decision"), the OTP provides the Chamber with the following information, to clarify certain matters in advance of the scheduled conference. The OTP files this submission as a public document because it does not entail any disclosure of sensitive or confidential information.

Information Regarding The Status of the Investigation

1. To date, the OTP has made no decision under Article 53 (2) in the investigation in the situation of Uganda, *i.e.*, a decision not to prosecute individuals due to a lack of "sufficient basis for a prosecution." Rather, upon investigation of the relevant crimes, at all times pursuant to Article 54, the OTP has made affirmative determinations to seek warrants of arrest which name certain individuals established by the evidence to be located at the highest levels of the LRA command structure. These determinations were made in accordance with the OTP's publicly announced policy of focusing its prosecutorial efforts and resources on those persons who bear the greatest responsibility.¹
2. The OTP notes that the Chamber has filed with the Registry copies of certain statements made by the Chief Prosecutor.² The OTP respectfully submits that

¹ See Paper on some policy issues before the Office of the Prosecutor, September 2003, p. 7, available at http://www.icc-cpi.int/library/organs/otp/030905_Policy_Paper.pdf.

² Registration into a record of proceedings of Statement by Luis Moreno-Ocampo, Informal meeting of Legal Advisors of Ministries of Foreign Affairs, New York, 24 October 2005;

none of those statements constitute any decision reached by the OTP because of a lack of “sufficient basis for a prosecution” under Article 53(2). The Chamber cites, in paragraph 8 of the Decision, the statement made by the Prosecutor at the Informal Meeting of Legal Advisors of Ministries of Foreign Affairs that “the interpretation of Article 53...involves the OTP and ultimately the judges.” The context of this statement was the Prosecutor’s discussion of the court capacity model, not the investigation in Uganda. The Prosecutor’s statement related to challenges faced by the Court as a whole in relation to the selection of situations, not cases. It was in that context that the Prosecutor further commented that, as in relation to any article of the Statute, the judges must be involved in interpreting the provision.

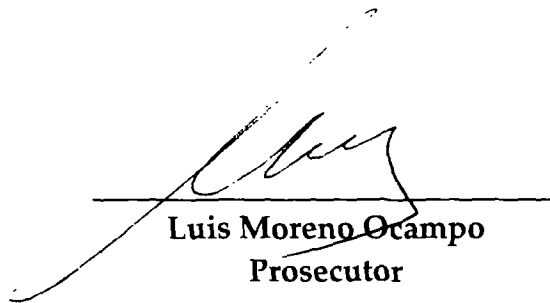
3. The Prosecutor’s statement before the Ministries of Foreign Affairs about the Uganda investigation, as opposed to the general topic of the future functioning of the Court, was that the investigation is “nearing completion,” and not that the investigation has been completed.
4. The statement made at the Fourth Session of the Assembly of State Parties on 28 November 2005, cited at paragraph 9 of the Decision, also refers to the possibility of investigating new crimes committed by other LRA commanders and of bringing other cases related to crimes committed by other groups if and when those crimes reach the gravity standards of the Statute. Hence, the statement establishes that other affirmative prosecutorial determinations *may* be reached in the future.

Déclaration de M. Luis Moreno-Ocampo, Réunion informelle des Conseillers juridiques des Ministères des Affaires Etrangères, New York, 24 Octobre 2005 and Statement by Luis Moreno-Ocampo, Fourth Session of the Assembly of State Parties, The Hague, 28 November 2005, filed on 2 December 2005.

5. The Decision also cites a statement by the Senior Trial Lawyer in charge of the case made at a prior status conference, informing the Chamber that the OTP does not plan to continue investigating past crimes committed by the LRA.³ This statement, like the other statements cited by the Chamber, reflects an affirmative decision to seek warrants of arrest naming a group of individuals based on the existing prosecutorial policy of focusing on those persons bearing the greatest responsibility.
6. The OTP is satisfied that its investigative efforts thus far have firmly established that the individuals named in the warrants of arrest bear the greatest criminal responsibility for the crimes committed by the LRA within the referred situation. Accordingly it does not currently intend to seek warrants of arrest naming other LRA members for responsibility in crimes committed before the submission of the warrant application. The OTP's public statements reflect and communicate this intention. The investigation is not fully completed, however, as the OTP has also publicly stated, and it remains the OTP's legal right to request modification of the existing warrants of arrest, under Art. 58(6).
7. The OTP re-states the following in relation to alleged crimes involving other groups, notably the UPDF: inquiries and analysis of information and potential evidence related to these allegations are ongoing. The OTP intends to continue the process of gathering and analysis of information in relation to this cluster of alleged crimes in the coming months.

³ Decision at p. 3, para. 7.

8. The Pre-Trial Chamber's decision of 13 October 2005 requested notification from the OTP 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," *see* Decision at p. 4, para. 12.⁴ This filing explains that no notification has been made because no such decision has been reached by the OTP. In light of this circumstance, the OTP does not consider Regulation 48, the provision cited in the Decision at p.4, para. 14, to be applicable to the upcoming conference. In any event, the OTP is pleased to attend the scheduled conference to discuss the foregoing and to consider any other matter raised by the Chamber.⁵



Luis Moreno Ocampo
Prosecutor

Dated this 11th day of January, 2006

At The Hague, The Netherlands

⁴ Quoting Decision on the Prosecutor's Application for Unsealing of the Warrants of Arrest, at p. 10, para. 32, filed on 13 October 2005.

⁵ The OTP appreciates that the Pre-Trial Chamber has ordered the status conference to take place by way of closed session, pursuant to Regulation 20(2) to permit the protection of sensitive or confidential information, if such information is requested or offered.