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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
*vs. JOSEPH KONY, VINCENT OTTI, RASKA LUKWIYA, OKOT
ODHIAMBO and DOMINIC ONGWEN***

Public Document
**SUBMISSION OF INFORMATION ON THE STATUS OF THE
EXECUTION OF THE WARRANTS OF ARREST IN THE SITUATION IN
UGANDA**

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor

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Preliminary Statement

The Office of the Prosecutor (“OTP”) respectfully submits information on the status of the execution of the warrants of arrest in the situation in Uganda, in response to an Order of this Chamber dated 15 September 2006. The OTP appreciates the opportunity to address the topic of the execution of the first warrants issued by the International Criminal Court (“ICC”). As an international court, the ICC is dependent upon international cooperation from sovereign states, rather than any ICC-directed police or military force, to effectuate arrest. The facts furnished below underscore that a central challenge facing the new institution of the ICC is to galvanise and obtain cooperation from the States-parties and the international community sufficient to support the critical step of executing warrants of arrest.

The warrants of arrest charging Joseph KONY, Vincent OTTI, Raska LUKWIYA, Okot ODHIAMBO, and Dominic ONGWEN with crimes against humanity and war crimes were first transmitted confidentially to the three territorial states in which the alleged leaders of the Lord’s Resistance Army (“LRA”) were believed to be located – Uganda, the Democratic Republic of Congo (the “DRC”), and the Sudan – following an order from this Chamber dated 27 September 2005. The OTP sets forth below the steps which Uganda, the DRC and the Sudan have taken in support of execution of the warrants of arrest, as reported by those countries either publicly or in communications to the OTP. The OTP also describes the steps that it continues to take to promote support and cooperation as an aid to the efforts of the territorial states to execute the warrants of arrest.

The endeavors of the Government of Uganda, in particular, to seek cooperation in support of arrest efforts, following issuance of the warrants or arrest, are a matter of public record. The Ugandan government also submitted correspondence this week, in response to an inquiry from the Registry, re-affirming its understanding of Uganda’s obligations under the Rome Statute and its continuing commitment to

cooperation with the Court.¹ The Government describes in its letter Uganda's efforts to engage the governments of the DRC and the Sudan, as well as UN peacekeeping forces in the DRC and the Sudan, to forge a regional response to the LRA threat. The Government of Uganda also describes that, due to continuing difficulties in effecting arrest, including the problem of protecting women and children abductees, and the lack of adequate support from regional and international partners, it determined in July 2006, at the urging of the Government of Southern Sudan, to enter into negotiations with the LRA to seek a permanent end to the 20-year conflict.

The Ugandan government has stated in its letter, and in its communications to the OTP, that the current negotiations between itself and the LRA are at an early stage and thus that it is premature to predict the outcome. The Ugandan government has acknowledged, as have others, the positive effect that the warrants have had in motivating the LRA to attend peace talks, and the Government continues to seek, as stated in its correspondence, "a permanent end to the violence that serves the need for peace and justice, compatible with [Rome Statute] obligations."

The negotiations currently underway have local support and the support of States, departments of the United Nations, and non-governmental organizations. As is recounted below, there is simultaneously recognition, consistent with the statement in the letter from the Ugandan government, and with prior statements of this Office, that peace and justice should continue to be viewed as mutually reinforcing objectives. Importantly, there has been no request to the OTP for "withdrawal" of the warrants. Rather, as is described below, there is also broad support locally and internationally for an ideal which is one of the aims expressed in the Preamble of the

¹ The letter, which is signed by the Solicitor General of Uganda, responded to a request from the Registrar following this Chamber's 15 September 2006 Order (hereinafter "GoU Letter"). Although the letter bears a marking that it is "privileged and confidential," the OTP has received written confirmation, conveyed in turn to the Registry, that the Government of Uganda has no objection to the public filing of the document.

Rome Statute: that lasting peace requires that there be no impunity for crimes of concern to the international community as a whole.

Procedural Background

1. On 9 July 2005, this Chamber issued warrants of arrest, under seal, naming Joseph KONY, Vincent OTTI, Raska LUKWIYA, Okot ODHIAMBO, and Dominic ONGWEN, and charging these alleged LRA leaders with crimes against humanity and war crimes.²
2. On 27 September 2005, following an urgent application by the OTP, the Chamber ordered that the Registrar transmit, under seal, Requests for Arrest and Surrender to the Governments of Uganda, the DRC, and the Sudan.³ Annexed to these Requests for Arrest and Surrender, and also transmitted confidentially, were the warrants issued on 8 July 2005 for OTTI, LUKWIYA, ODHIAMBO, and ONGWEN, and an amended warrant of arrest naming KONY.⁴
3. On 13 October 2005, the Chamber ordered the unsealing of the warrants and the Requests for Arrest and Surrender.⁵

² See "Decision On The Prosecutor's Application For Warrants Of Arrest Under Article 58," ICC-02/04-01/05-1, 8 July 2005; "Warrant Of Arrest For Joseph Kony," ICC-02/04-01/05-2-US-Exp, 8 July 2005; "Warrant Of Arrest For Vincent Otti," ICC-02/04-01/05-4-US-Exp, 8 July 2005; "Warrant Of Arrest For Raska Lukwiya," ICC-02/04-01/05-6-US-Exp, 8 July 2005; "Warrant Of Arrest For Okot Odhiambo," ICC-02/04-01/05-8-US-Exp, 8 July 2005; "Warrant Of Arrest For Dominic Ongwen," ICC-02/04-01/05-10-US-Exp, 8 July 2005. Also on 8 July 2005, the Chamber issued corresponding Requests for Arrest and Surrender addressed solely to Uganda. See ICC-02/04-01/05-12-US-Exp to ICC-02/04-01/05-16-US-Exp, 8 July 2005.

³ See "Decision On The Prosecutor's Urgent Application Dated 26 September 2005," ICC-02/04-01/05-27, 27 September 2005 (hereinafter "27 September 2005 Decision"). For the Requests for Arrest and Surrender addressed to the DRC, see ICC-02/04-01/05-30-US-Exp to ICC-02/04-01/05-34-US-Exp, 27 September 2005. For the Requests for Arrest and Surrender addressed to the Sudan, see ICC-02/04-01/05-35-US-Exp to ICC-02/04-01/05-39-US-Exp, 27 September 2005. The warrant naming Joseph Kony and the Request for Arrest and Surrender naming Kony addressed to the Government of Uganda were amended, also on 27 September 2005, at the request of the OTP. See 27 September 2005 Decision, p. 5.

⁴ See *id*

⁵ "Decision on the Prosecutor's Application for Unsealing of the Warrants of Arrest," ICC-02/04-01/05-52, 13 October 2005, p. 7-8.

4. On 14 August 2006, the OTP notified the Chamber that the Government of Uganda had reported the killing of Raska LUKWIYA during a gun fight which took place on 12 August 2006 between the Uganda People's Defence Force ("UPDF") and the LRA in northern Uganda.⁶ The OTP stated that the Ugandan Government was confirming the identification of the body believed to be that of Lukwiya, and that the OTP would aid in this effort, if requested to do so.⁷
5. On 15 September 2006, this Chamber issued the "Order to the Registrar and the Prosecutor for Submission of Information on the Status of Execution of the Warrants of Arrest in the Situation in Uganda."⁸ In this Order, the Chamber stated that there was a need "to receive a complete update on the status of the execution of the Warrants and of the Requests and of the ongoing cooperation with the relevant States . . ."⁹ The Order directed the OTP to submit, by today's date, "information and comments in writing on the status of cooperation with the relevant States and with the Registry as regards the execution of the Warrants."¹⁰
6. The Registry sought, on 25 September 2006, updates from the Governments of Uganda, the DRC, and the Sudan on the status of warrant execution. To date, only the Government of Uganda has provided an update. The OTP respectfully requests an opportunity to comment once other responses are received.

Status of the Warrants of Arrest, Requests for Arrest and Surrender, and Cooperation From States

A. The Persons Named in the Warrants of Arrest

⁶ "Submission of Information Regarding Raska Lukwiya," ICC-02/04-01/05-97, 14 August 2006.

⁷ *Id.*, para. 3.

⁸ See ICC-02/04-01/05-111, 15 September 2006 (hereinafter "15 September 2006 Order").

⁹ *Id.*, p. 5.

¹⁰ See *id.*, p. 6.

7. This Chamber first unsealed the warrants of arrest and the Requests for Arrest and Surrender in mid-October 2005.¹¹ In June 2006, through the efforts of the OTP and the Registry, the warrants also became the subject of Interpol “red notices.”¹² These notices ensure that the descriptions of the persons named in the warrants, and their status as persons whose arrests are sought, is known globally.
8. At the time the warrants were first publicized in October 2005, LRA second-in-command Vincent OTTI had just moved for the first time to the Eastern DRC, with a large group of the remaining LRA fighters. This group settled in the vicinity of Garamba National Park. Joseph KONY initially remained behind in the Southern Sudan, but crossed to the DRC in March 2006. Okot ODHIAMBO remained in Sudan, but also is now believed to have rejoined the LRA at their DRC base. Dominic ONGWEN was reported by the Government of Uganda to have been killed in fighting on 30 September 2005, but subsequent DNA testing undertaken jointly by the Ugandan Government and the OTP demonstrated that the body of the LRA casualty had been misidentified.¹³ ONGWEN was operating mainly in Uganda until last month, but is now believed to be in the Sudan.
9. The Government of Uganda reported that Raska LUKWIYA had been killed on 12 August 2006 during a fire fight with the UPDF.¹⁴ At the request of the

¹¹ “Decision On The Prosecutor’s Application For Unsealing Of The Warrants Of Arrest,” ICC-02/04-01/05-52, 13 October 2005.

¹² The notices can be viewed at the following links:

KONY: www.interpol.int/public/data/wanted/notices/data/2006/20/2006_26320.asp?HM=1

OTTI: www.interpol.int/public/data/wanted/notices/data/2006/17/2006_26317.asp?HM=1

LUKWIYA: www.interpol.int/public/data/wanted/notices/data/2006/15/2006_26315.asp?HM=1

ODHIAMBO: www.interpol.int/public/data/wanted/notices/data/2006/18/2006_26318.asp?HM=1

ONGWEN: www.interpol.int/public/data/wanted/notices/data/2006/21/2006_26321.asp?HM=1

¹³ “Notification That Government of Uganda Will Continue Efforts to Execute Warrant of Arrest Naming Dominic Ongwen,” ICC-02/04-01/05-80, 11 April 2006.

¹⁴ “Submission of Information Regarding Raska Lukwiya,” ICC-02/04-01/05-97, 14 August 2006.

Government of Uganda, and consistent with the representations made in its filing of 14 August 2006, the OTP has aided in confirming initial identifications made of LUKWIYA. Earlier this week, the OTP received the results of DNA testing performed at the Netherlands Forensic Institute on samples taken from the body believed to be that of LUKWIYA. This testing has confirmed that the person killed in the fight with the UPDF was Raska LUKWIYA. The results have been communicated to the Government of Uganda, and therefore it is anticipated that that government will soon be notifying the Registry of its inability to execute the Request for Arrest and Surrender naming LUKWIYA.

10. KONY, OTTI, and ONGWEN have each made public statements which demonstrate full awareness of the existence of the warrants naming them.¹⁵ In response to the statements of KONY and OTTI, the OTP issued public statements inviting them and the other named individuals to come forward to the Court and respond to the charges.¹⁶ The OTP statements have guaranteed safe passage to The Hague and the satisfaction of the highest standards of due process.¹⁷

¹⁵ See "Uganda Rebel Leader Breaks Silence," BBC News, 28 June 2006 (<http://news.bbc.co.uk/2/hi/programmes/newsnight/5124762.stm>); see also "NewsNight Talks," BBC News Broadcast, 28 June 2006 (video interview given by LRA, including KONY, to reporter Samuel Farmer).

"LRA leaders decline talk offer," Sudann.net, 3 August 2006 (http://platform.blogs.com/passionofthepresent/2006/08/lra_leaders_dec.html);

"Kony pulls out of peace-talks," New Vision, 3 August 2006;

"LRA Deputy refuses to be lured by 'trap,'" Reuters, 4 August 2006 (http://www.int.iol.co.za/index.php?set_id=1&click_id=68&art_id=qw1154639891977B225);

"I am not scared of the ICC, indicted Ongwen claims," New Vision, 5 September 2006 (<http://allafrica.com/stories/200609060603.html>)

¹⁶ See e.g. "Kony Offered Free Passage to Hague," The Monitor, 30 June 2006 (<http://www.globalpolicy.org/intljustice/wanted/2006/0630passage.htm>), "NewsNight Talks," BBC News Broadcast, 28 June 2006 (in video interview BBC presenter read Chief Prosecutor's statement inviting KONY and other commanders named in the warrants of arrest to respond to the charges. The presenter stated, "The court will guarantee their safe passage to The Hague, and they will be given every opportunity and facility to present their case before an independent judicial body with the highest guarantees of due process").

¹⁷ See *id.*

B. LRA Activities and Security in Northern Uganda Since Public Issuance of the Warrants of Arrest

11. The number and severity of LRA attacks in northern Uganda, which were already at their lowest level in years at the time the warrants were first made public, continued to decline following issuance of the warrants. Violence in northern Uganda decreased as LRA fighters moved into Sudan and then the DRC, and crimes attributed to LRA have nearly ceased following the implementation of a Cessation of Hostilities Agreement signed by the LRA and the Government of Uganda, in August 2006, as part of the current peace negotiations.¹⁸ Already in June 2006, Kofi Annan, the Secretary-General of the UN, who was reporting to the UN Security Council about the LRA, had noted that “attacks by LRA are at their lowest recorded levels in several years”¹⁹

12. The decreasing crime levels in northern Uganda importantly have resulted in an improvement in the humanitarian crisis there. For example, Jan Egeland, UN Under Secretary-General for Humanitarian Affairs, reported to the UN Security Council on 15 September 2006 that “OCHA could now reach 54 of the 102 internally displaced persons’ camps without military escorts, up from 34 in May,” that “internally displaced persons in Acholiland were cautiously beginning to move home,” and that “the number of night commuters had fallen to 10,000 from a high of 40,000 last year. . . .”²⁰

¹⁸ The decrease in violence levels in Uganda in the past year has been widely reported and is reflected in the OTP’s security monitoring, with which the Chamber has familiarity.

¹⁹ Report of the Secretary-General pursuant to resolutions 1653 (2006) and 1663 (2006) (hereinafter “Annan Report”), 29 June 2006, para. 6.

<http://daccessdds.un.org/doc/UNDOC/GEN/N06/415/40/PDF/N0641540.pdf?OpenElement>

²⁰ “Under Secretary-General Calls For Greater Security Council Commitment to Ending Conflicts in Democratic Republic of Congo, Northern Uganda,” Press Release re Security Council 5525th Meeting, 15 September 2006 (hereinafter “Egeland Report”), p. 3.

(<http://www.un.org/News/Press/docs/2006/sc8831.doc.htm>).

“OCHA” is an acronym for the Office for the Coordination of Humanitarian Affairs.

13. There is also recognition, however, that the movement of LRA into eastern DRC underscores the continuing nature of the regional threat posed by the armed group. The Secretary General's latest report to the Security Council stated that the LRA should continue to be regarded "as a threat to regional peace," because, among other things, it has "a proven ability to regroup and continue committing atrocities," and because its presence at the borders of the DRC, Uganda and southern Sudan presents "a real threat to the rule of law and adds to the existing security problems in the Great Lakes region. . . ."²¹ In her intervention in this Court at the Second Public Hearing of the Prosecutor, on 25 September 2006, Ambassador Mirjam Blaak of Uganda similarly noted the "regional security threat" posed by the LRA, because of the group's possible effect on "the implementation of the Comprehensive Peace Agreement between the Government of Sudan and the Government of Southern Sudan."²²
14. Moreover, while attacks committed by the LRA in northern Uganda have lessened dramatically since issuance of the warrants, the LRA has also demonstrated a continuing ability to mount strategic and deadly operations in Uganda, the DRC, and southern Sudan. Among the significant attacks attributed to the LRA in the past year are²³:
- In late October and early November 2005, a series of attacks upon humanitarian workers and tourists in northern Uganda and southern Sudan, which resulted in six civilians being killed and others seriously wounded;²⁴

²¹ See Annan Report, paras. 5, 7.

²² See Intervention of Ambassador Mirjam Blaak of Uganda, 25 September 2006 (written version) (hereinafter "Amb. Blaak Intervention"), p. 2.

²³ The sources identified in following footnotes for the information conveyed in the remainder of paragraph 14 are public. The OTP also relies on other sources for security reporting of this nature.

²⁴ This information has previously been conveyed to the Chamber and has been widely reported.

- On 23 January 2006, in Garamba National Park, a fire fight between forces of MONUC and the LRA, during which LRA forces killed eight UN peacekeepers from Guatemala;²⁵
- Between September 2005 and March 2006, a series of attacks in the south-western equatorial province in Sudan, including attacks in March 2006 on or near the town of Yambio, during which the LRA are alleged to have looted a UNICEF compound and engaged a group of UNMIS peacekeepers from Bangladesh.²⁶
- As late as September 2006, LRA activity extending into eastern DRC, including Ituri, including several clashes with the Armed Forces of the Democratic Republic of Congo ("FARDC").²⁷

C. International Cooperation in Support of Arrest Efforts

15. In the ICC system, unlike in domestic criminal justice systems, the court which issues the warrants of arrest relies exclusively on international cooperation for the execution of those warrants. In this instance, the transmission of the warrants of arrest, in conformity with the system established by the Rome Statute, has triggered efforts to garner the international cooperation necessary to support arrest and surrender. These initiatives have been led mainly by the Government of Uganda, although they also necessarily involve the States affected by the LRA, the UN (in light of the MONUC and UNMIS forces on the

²⁵ See Annan Report, para. 26; "8 UN peacekeepers killed in Congo," Reuters, 23 January 2006 (<http://www.msnbc.msn.com/id/10987753/>); "UN troops kill LRA fighters," New Vision, 24 January 2005.

(<http://www.newvision.co.ug/detail.php?mainNewsCategoryId=8&newsCategoryId=13&newsId=477815>)

²⁶ See Annan Report, para. 24; "LRA Attacks in Southern Sudan," IRIN News, 16 September 2005; Report of the Secretary-General on the Sudan, S/2006/160, 14 March 2006, para. 15. (http://www.womenwarpeace.org/sudan/docs/sgreptoscl4mar06_Sudan.pdf#search=%22LRA%20attack%20MONUC%20forces%20Yambio%20Uganda%20March%202006%22);

UN WFP Emergency Report No. 13, 31 March 2006; UN Situation Report 23 March 2006, Sudan Section, para (e); "UN Envoy to visit Southern Sudan, Nigeria," UNMIS Media Monitoring Report, 29 March 2006, Section entitled "UN."

²⁷ "LRA leader moves towards assembly point," IRIN, 20 September 2006

(http://www.irinnews.org/report.asp?ReportID=55651&SelectRegion=East_Africa)

ground in the DRC and the Sudan, respectively), and other States. The OTP reports in this section of this submission upon the initiatives undertaken.

16. Since the warrants were issued, the UN Security Council twice has issued resolutions referring to the LRA. On 27 January 2006, in Resolution 1653, the Security Council strongly condemned the LRA and other armed groups operating in the Great Lakes region, and urged “all States concerned to take action to bring to justice perpetrators of grave violations of human rights and international humanitarian law.”²⁸ In Resolution 1663, adopted on 24 March 2006, in addressing the situation in Sudan, the Security Council extended the mandate of UNMIS, “strongly condemn[ed] the activities of militias and armed groups such as the Lord’s Resistance Army,” and sought proposals from the Secretary General on “how UN agencies and missions, in particular UNMIS, could more effectively address the problem of the LRA.”²⁹
17. In addition, in its 4 October 2006 letter to the Registry, the Ugandan government has stated that it has “engaged with the Governments of the DRC and The Sudan, along with the UN peacekeeping forces in Southern Sudan (UNMIS) and the DRC (MONUC) to ensure effective operational planning and coordination to tackle the threat posed by the LRA.”³⁰
18. Also, in April of this year, Uganda’s Foreign and Defence Ministers provided a briefing to the UN Security Council upon the topics of, among other things, “our proposals on the way forward to ensure the support of the international community for the disarmament and demobilization of the LRA and for the

²⁸ Security Council Resolution 1653 (2006), 27 January 2006, p. 3, para. 6 (<http://www.globalpolicy.org/security/issues/uganda/2006/0127greatlakes.pdf>)

²⁹ Security Council Resolution 1663 (2006), 24 March 2006, p. 2, paras. 7,8 (<http://www.globalpolicy.org/security/issues/sudan/2006/0324transition.pdf>)

³⁰ GoU Letter, p.1.

arrest of its leadership”³¹ The Defence Minister reported that among the steps taken by Uganda was the establishment of a regional security group which would focus, *inter alia*, upon “a joint regional military mechanism” involving Uganda, the DRC, and the Sudan, as well as MONUC and UNMIS, “to disarm the LRA based in southern Sudan and in Garamba National Park . . . ; facilitating . . . cooperation with the International Criminal Court to execute the warrants of arrest against the LRA leadership.”³² The Ugandan ministers emphasized the need to “develop combined efforts by regional stakeholders,” given the regional nature of the threat posed, and requested UN support for a series of steps which could be taken to execute the warrants of arrest.³³ These proposed steps included development of a joint operational plan among the national and international forces in the region, the issuing of stronger mandates to UNMIS and MONUC, and the exploration of the possibility of mandating a country or regional power to deal with the LRA.³⁴

19. Secretary-General Annan responded to Security Council 1663, which requested proposals on the topic of how UN agencies, and missions could more effectively address the problem of the LRA, in the briefing of 29 June 2006. Secretary-General Annan (1) underscored the difficulties that the UN missions in the Congo and Sudan would face in mounting operations to support arrest;³⁵ and (2) endorsed the notion that the most promising means of addressing the LRA threat

³¹ “Uganda’s Foreign, Defence Ministers Brief Security Council, Call for Strong Measures to Disarm Lord’s Resistance Army,” Press Release re Security Council 5415th Meeting, 19 April 2006, p. 5. (<http://daccessdds.un.org/doc/UNDOC/PRO/N06/315/01/PDF/N0631501.pdf?OpenElement>). See also Briefings by the Minister for Foreign Affairs and the Minister of Defence of Uganda, Security Council, 5415th Meeting, 19 April 2006, p. 5.

³² See *id.*, p. 3.

³³ See *id.*, p. 6-7.

³⁴ See *id.*

³⁵ See Annan Report, *e.g.*, paras. 19-25, 28-31, 44. For example, Secretary-General Annan reaffirmed that “MONUC is aware of its mandate to detain the LRA leaders who have been indicted by the International Criminal Court, and would seek to do so if it came across them while carrying out their mandated duties.” Annan Report, para. 31 Secretary General Annan emphasized, however, that efforts to provide security for the elections in the DRC would “temporarily limit the extent to which MONUC assets could be dedicated to pursuing foreign armed groups such as the LRA . . .” See *id.*

by force would be for the “governments in the region [to] find a mutually agreeable way to strengthen cooperation on the ground among their security forces.”³⁶ In this instance, stated Mr. Annan, there would be “a solid basis to deal more effectively with the lingering threat from LRA.”³⁷

20. The Security Council briefings by the government of Uganda and by the Secretary-General contain more highly relevant information about international cooperation in support of arrest efforts than can adequately be summarized in this submission, and the OTP therefore respectfully refers the Chamber to the entirety of these sources.

D. OTP Activities in Support of Arrest Efforts

21. In this post-warrant phase, the OTP has continued its activities to promote cooperation as an aid to the efforts of the territorial states. The OTP continues to receive regular updates on issues relating to the arrest warrants from the relevant agencies and departments of the Ugandan, Sudanese, and DRC Governments. In April 2006, OTP representatives met senior officials from the justice and security departments of the Ugandan government involved in effectuating arrest. The Chief Prosecutor regularly communicates with the Ugandan Minister for Security, including during meetings in The Hague. Since October 2005, the OTP has conducted four missions to the Sudan during which meetings were conducted with officials from the Governments of Sudan and Southern Sudan about the execution of the warrants of arrest. Since the LRA entered the DRC, the OTP has also conducted missions to the DRC to exchange information about the activities of the LRA with the DRC government. In addition, in April 2006, the Chief Prosecutor met with President Joseph Kabila and other government and UN officials about the LRA and the execution of warrants naming LRA commanders located inside the DRC territory.

³⁶ See *id.*, para. 54.

³⁷ See *id.*

22. The OTP also has conducted missions, in Europe, Africa, and to New York, to meet with representatives of other concerned States-parties and the relevant departments of the UN, including the Department of Peacekeeping Operations, as a means of supporting international cooperation in aid of arrest efforts.

E. The Commencement of Negotiations Between the Government of Uganda and the LRA Delegation in Juba

23. The facts related in this paragraph have been widely reported and are likely already known to the Chamber but they are repeated here as an introduction. On 26 August 2006, the Government of Uganda and the LRA signed a Cessation of Hostilities Agreement which conditioned a temporary cease-fire upon the movement of LRA forces into two assembly zones in southern Sudan: one in Owiny Kibul and the other in Ri-Kwangba.³⁸ This agreement was the result of an initiative by the Government of Southern Sudan, including Salva Kiir and Riek Machar, respectively the President and Vice-President of Southern Sudan, to encourage and host peace talks in Juba, southern Sudan.³⁹ In the first week of May 2006, Machar had met KONY and OTTI and other LRA forces at the Sudan/DRC border.⁴⁰ In July 2006, the Governments of Uganda and Southern Sudan agreed to pursue negotiations with the LRA aimed at permanently ending the conflict.⁴¹ Subsequent discussions between a delegation representing the LRA and representatives of the GoU resulted in the signing of the Cessation of Hostilities Agreement.⁴²

³⁸ See, e.g., Egeland Report, p. 3-4; "Uganda. Gov't and rebels sure of an end to 20-year conflict," IRIN News, 28 August 2006 (<http://www.irinnews.org/print.asp?ReportID=55290>).

³⁹ See, e.g., Egeland Report, p. 3; see also Amb. Blaak Intervention, p. 2.

⁴⁰ See, e.g., "Uganda: LRA rebels ready to talk peace - Joseph Kony," IRIN News, 25 May 2006 (http://www.irinnews.org/report.asp?ReportID=53518&SelectRegion=East_Africa&SelectCountry=UGANDA).

⁴¹ See, e.g., Amb. Blaak Intervention, p. 2; "Uganda peace talks with LRA to begin next week," AFP, 3 July 2006 (<http://www.turkishpress.com/news.asp?id=131701>); "Ugandan talks with LRA next week," BBC News, 3 July 2006 (<http://news.bbc.co.uk/2/hi/africa/5140296.stm>).

⁴² See, e.g., Egeland Report, p. 3-4; "Uganda: Gov't and rebels sure of an end to 20-year conflict," IRIN News, 28 August 2006 (<http://www.irinnews.org/print.asp?ReportID=55290>).

24. The Governments of Uganda and Southern Sudan have expressed publicly, and also in their communications with the OTP, that the decision to enter into negotiations with the LRA was motivated by an assessment of the difficulties which continue to impair efforts to end the LRA threat by means of force. The Ugandan government has reported in its 4 October 2006 letter to the Registry that there “remain[ed] a significant operational challenge,” in attempting the apprehension of LRA leaders operating regionally in three countries, despite ongoing efforts by Uganda to obtain “the commitment of regional and international partners to prioritise the resolution of the situation concerning the LRA.”⁴³ According to Uganda’s letter to the Registry, it was this circumstance, together with responsibility borne by the Ugandan government to protect “the civilian population, who are at risk of being victimized by the LRA” which led to the decision to engage in peace talks.⁴⁴ Salva Kiir, the President of Southern Sudan, has emphasized publicly the interest of his government in attempting to find a peaceful means to disable completely the LRA before “implement[ing] the ICC order.”⁴⁵ Both Presidents have stated openly an ongoing commitment to permanently ending the LRA threat, by the means of joint operations if necessary, in the event the current negotiations with the LRA fail.⁴⁶ The Government of Uganda, in its 4 October 2006 letter, states that its efforts to find a regional solution to overcome the threat posed by the LRA are ongoing.⁴⁷

⁴³ GoU Letter, p. 1, 2.

⁴⁴ GoU Letter, p. 2; *see also* Amb. Blaak Intervention, p. 2.

⁴⁵ “Southern Sudan seeks peace with LRA”, Associated Press, 9 June 2006 (http://www.iol.co.za/index.php?click_id=68&art_id=qw1149833701160R131&set_id=)

⁴⁶ “War is Also Politics,” – Sudan Salva Siil” Sudan.net, 31 October 2005

(http://platform.blogs.com/passionofthepresent/2005/10/war_is_also_pol.html); “President Rejects New Mediators,” News Release, State House, The Republic of Uganda, 18 August 2006, (“if the current peace talks in the Southern Sudanese town of Juba fail, the Democratic Republic of Congo (DRC), Southern Sudan, MONUC and UPDF, should co-operate to hunt for Kony and his group in the DRC’s Garamba National Park”); (http://www.statehouse.go.ug/news_detail.php?newsId=922&category=News%20Release); “Uganda. Museveni Asks U.S to Back Plan B against LRA,” The Monitor, 2 October 2006 (<http://allafrica.com/stories/200610021428.html>).

“Rebel LRA faces military option if peace talks fail,” PANA, 20 August 2006 (<http://www.panapress.com/newslatf.asp?code=eng001610&dte=20/08/2006>).

⁴⁷ GoU Letter, p. 1.

25. The motives behind the willingness of the LRA leadership to engage in discussions about a negotiated end to the conflict are unclear. The unprecedented movement of the LRA into eastern Congo has been attributed to the success of the military campaigns against them in Uganda and southern Sudan, and the loss of the LRA's ability to maintain bases in southern Sudan, because of the terms of the Comprehensive Peace Agreement signed in Sudan between former south Sudanese rebel groups and the Government of Sudan. The role of the existence of the warrants in creating pressure upon the LRA leadership has also publicly been acknowledged.⁴⁸
26. As the foregoing discussion demonstrates, the States to which the warrants of arrest were transmitted continue to re-state their commitment to executing the warrants of arrest, during the pendency of the ongoing negotiations. Ambassador Blaak reported last week in this Court that Uganda has engaged in the current peace talks as a means of "seeking a permanent solution to the violence that serves the need for peace and justice, compatible with our obligations under the Rome Statute."⁴⁹ This same sentiment is reiterated in the letter of the Government of Uganda to the Registry.⁵⁰ The Government of Sudan has signed an *ad hoc* agreement with the OTP in which it agreed to cooperate in arrest efforts, in addition to publicly acknowledging the "order" of the ICC.⁵¹

⁴⁸ See, e.g., Egeland Report, p. 4 (reporting that Egeland stated that "the indictments had been a factor in pushing LRA into negotiations, that they should not disrupt the talks, and that there could be no impunity for mass murder and crimes against humanity"); Amb. Blaak Intervention, p. 3 ("I would like to emphasize that if it was not for the warrants of arrest hanging over the heads of the indictees, the LRA may not have agreed to the peace process"); "Peace in Northern Uganda?" Report of the International Crisis Group, 13 September 2006 (stating that the ICC warrants "rattled the indicted commanders, reduced their opportunity to emerge from the conflict with impunity and put pressure on Khartoum to cut its umbilical cord to the LRA") (http://www.crisisgroup.org/library/documents/africa/central_africa/b041_peace_in_northern_uganda.pdf).

⁴⁹ See Amb. Blaak Intervention, p. 3.

⁵⁰ GoU Letter, p. 2, ("the Government of Uganda is fully cognisant of its obligations under the Rome Statute, and assures the ICC that we are seeking a permanent end to the violence that serves the need for peace and justice, compatible with those obligations").

⁵¹ The *ad hoc* agreement has also publicly been noted by UN Secretary-General Annan. "While the Sudan is not a State party to the Rome Statute, it has signed a memorandum of understanding with

Through its meetings with DRC representatives, the OTP is aware that the Government of the DRC also understands its cooperation obligations and has in acknowledgment of those obligations requested MONUC to support arrest efforts, consistent with MONUC's mandate.

27. The peace negotiations have given rise to media accounts in which commentators or representatives of States are reported to have raised the possibility of "withdrawing" the warrants of arrest or granting an amnesty to the persons named in the warrants. No State or any other entity, however, has sought withdrawal of the warrants, nor has any State or any other entity requested any amnesty from this Court. The Government of Uganda, as a party to the talks, has also consistently indicated in its communications to the Registry and the OTP that, as Ambassador Blaak stated on 25 September 2006, "the talks remain at an early stage and it is speculative to determine the outcome at this moment."⁵²
28. The OTP, to date, has stated to media representatives that no party had sought withdrawal of the warrants of arrest,⁵³ but has avoided rendering further public statements about any possible negotiated outcomes that remain hypothetical.⁵⁴ Because neither the OTP nor the ICC are parties to the talks, the OTP has taken

the International Criminal Court pledging to hand over the indicted LRA leaders to the Hague." Annan Report, para. 25.

⁵² See Amb. Blaak Intervention, p. 3.

⁵³ See, e.g., Statement by the Chief Prosecutor, 12 July 2006, ICC-OTP-20060712-149-En. (<http://www.icc-cpi.int/press/pressreleases/167.html>)

The Government of Uganda made a similar media announcement. See Press Release on Talks Between Uganda Government and the ICC (OTP), 11 July 2006.

⁵⁴ It was reported on 7 September 2006, in *The Monitor*, one of the Ugandan daily newspapers, that the public information adviser of the OTP "suggested" that "the ICC would perhaps consider lifting the charges if a comprehensive peace agreement is reached." See "*Uganda: No Deal on Peace Warrants, ICC Tells Kony*," *The Monitor*, 7 September 2006 (<http://allafrica.com/stories/200609061215.html>).

The statements made by the adviser were not correctly reported. The sentiment inferred by the reporter is in fact inconsistent with the OTP's view.

great care to refrain from commenting publicly on any issue that the negotiating parties themselves have not deemed fruitful or necessary to raise with the OTP.

29. The latest letter from the Government of Uganda to the Registry reiterates that the “commitment of the Government to cooperate with, and support the Court remains unchanged since [the date of the referral].”⁵⁵ Ambassador Blaak also acknowledged the ongoing nature of Uganda’s cooperation, in openly seeking recognition from the other States-parties attending the Second Public Hearing of the Prosecutor that “executing the ICC arrest warrants is a collective responsibility requiring intensified international cooperation.”⁵⁶
30. The pendency of the peace talks has not interrupted the OTP’s receipt of regular updates on issues relating to the arrest warrants from the relevant arms of the Ugandan, Sudanese, and DRC Governments. The OTP also has not decreased its activities in support of international cooperation which could enhance arrest efforts.

F. Reaction to Warrants of Arrest: The Objectives of Peace and Accountability

31. As noted above, in para. 25, it has already been acknowledged that the warrants are believed thus far to have advanced simultaneously the objectives of justice and peace in northern Uganda, in that they have focused international attention to the conflict and brought additional pressure upon the LRA to engage in the current peace negotiations.
32. As the Chamber is undoubtedly aware, the ongoing negotiations to end the civil conflict enjoy broad support, and have been carried out in part on the basis of aid from interested States inside and outside the region, as well as UN departments,

⁵⁵ See GoU Letter, p. 1

⁵⁶ See Amb. Blaak Intervention, p. 3.

particularly those with humanitarian mandates, including UN OCHA and UNICEF.⁵⁷

33. The reactions to the warrants of arrest have included strong calls for the execution of the warrants to be subjugated to the end of obtaining peace. Still, there also continues to be strong support for the objective of ensuring that peace and justice continue to reinforce each other in northern Uganda. The Ugandan government continues in its latest statements to the Court and the States-parties to emphasize the role played by the warrants in bringing the LRA to the current negotiations, and the ongoing aim of finding a permanent solution “that serves the need for peace and justice, compatible with those [i.e. Rome Statute] obligations.”⁵⁸ Radio call-in shows in northern Uganda continue to draw a diversity of opinions from residents and victims there, including a strong view that impunity should not be a price paid for justice. The international NGO Human Rights Watch, while emphasizing that “genuine initiatives aimed at ending the devastating armed conflict are welcome,” has also stated expressed that “amnesty or similar measures can not be on the table when it comes to” war crimes and crimes against humanity.⁵⁹
34. At the United Nations, Jan Egeland reported to the UN Security Council in his September 2006 report that “the picture in the north was more promising than it had been in years” because of the ongoing negotiations, and that there was “strong concern” in Uganda “that the indictments, if not lifted, could threaten the progress in the most promising talks ever.”⁶⁰ He also stated, however, that there “could be no impunity for mass murder and crimes against humanity,” and urged the parties to “look at different ways to develop a solution that met local needs

⁵⁷ See, e.g., Egeland Report, p. 3.

⁵⁸ See Amb. Blaak Intervention, p. 3.

⁵⁹ “Uganda. No Amnesty for Atrocities – Turning a Blind Eye to Justice Undermines Durable peace,” Human Rights Watch News Release, 28 July 2006. (<http://hrw.org/english/docs/2006/07/27/uganda13863.htm>).

⁶⁰ See Egeland Report, p. 2, 3.

for reconciliation, as well as universal standards for justice and accountability.”⁶¹ Reactions of the States to these comments were predictably diverse, and included support for the proposition that, as one representative put it, “peace cannot be achieved by paying the price of justice.”⁶²

Status of Cooperation with the Registry

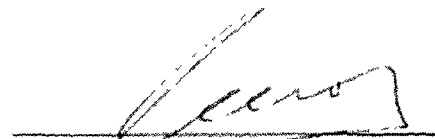
The 15 September 2006 Order also requested that the OTP address the status of its cooperation with the Registry. The OTP and the Registry remain fully cooperative and the OTP expresses gratitude to the Registry in particular for its support in the matters relating to this submission.

Conclusion

The Chamber’s 15 September 2006 Order emphasized the obligations of the States and the OTP with respect to execution of the warrants of arrest. For the reasons stated above, the OTP does not believe that there has been any refusal to execute the warrants of arrest on the part of any of the States to whom the Requests for Arrest and Surrender were transmitted; to the contrary, there have been significant efforts made, regionally and internationally, to garner the cooperation necessary to support arrest. Moreover, while the ongoing peace talks have generated remarks and commentary raising the prospect of withdrawing the warrants or granting amnesty, the state which is a party to those talks, the Government of Uganda, has assured this Court of its continuing commitment to fulfilling its obligations under the Rome Statute. The OTP respectfully submits this information on the status of the execution of the warrants of arrest in the situation in Uganda, with the hope that the updated information is helpful to the Chamber. The OTP respectfully renews its request to comment further following receipt by the Registry of updates from the DRC and the Sudan.

⁶¹ See *id.*, p. 2

⁶² See *id.*, p. 7.


Luis Moreno-Ocampo
Chief Prosecutor

Dated this 6th day of October 2006
At The Hague, The Netherlands

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