

**Cour
Pénale
Internationale**

**International
Criminal
Court**

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

Date: 9 September
2005

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 REDACTED VERSION**

**Application for Unsealing of Warrants of Arrest Issued on 8 July 2005, and
 Other Related Relief**

The Office of the Prosecutor	
Mr. Luis Moreno Ocampo, Prosecutor Mrs. Fatou Bensouda, Deputy Prosecutor Ms. Christine Chung, Senior Trial Lawyer Mr. Eric MacDonald, Trial Lawyer	

In anticipation of the completion of the implementation of protective measures deemed necessary and appropriate by the OTP and the VWU, the Prosecutor respectfully requests that Pre-Trial Chamber II unseal, in certain cases in redacted and amended form, the warrants of arrest previously issued on 8 July 2005 and naming Joseph KONY, Vincent OTTI, Raska LUKWIYA, Okot ODHIAMBO, and Dominic ONGWEN. The OTP requests that the Pre-Trial Chamber order the warrants of arrest to be unsealed on 28 September 2005, if, as is currently anticipated, the OTP reports to the Chamber completion of the implementation of protective measures before that date.¹ If, for some reason currently unforeseen, the OTP notifies the Chamber that the OTP and the VWU cannot complete implementation of protective measures on or before 28 September 2005, the OTP requests that the Pre-Trial Chamber order the unsealing of the warrants of arrest as soon thereafter as protective measures are completed. Consistent with the planning previously discussed before the Chamber, *see* 16 June 2005 Transcript, page 74, it is anticipated that the request for arrest and surrender to the Government of Uganda will be transmitted as soon as unsealing of the warrants of arrest is accomplished. The Registry anticipates carrying out the transmission possibly even on the same day the seal is lifted.

Request for Sealing of This Application

1. Because this submission is related to the currently sealed warrants of arrest, the OTP requests that this submission also be received under seal, and *ex*

¹ To ensure that the Chamber has adequate opportunity to consider this request, the OTP submits this request in advance of the anticipated date of completion of implementation of the plan.

parte, and that the contents and existence of this application remain sealed until the sealing of the warrants of arrest is lifted.²

Application for Unsealing of Arrest Warrants

A. Procedural History

2. The OTP first applied for the issuance of arrest warrants naming Joseph KONY, Vincent OTTI, Raska LUKWIYA, Okot ODHIAMBO, and Dominic ONGWEN, on 6 May 2005. This initial application was amended by application dated 18 May 2005 and filed on 20 May 2005. On 8 July 2005, this Pre-Trial Chamber issued the requested warrants, under seal.

3. All of the proceedings related to the Prosecutor's application for arrest warrants have been conducted by the Chamber on a sealed and *ex parte* basis thus far. In its initial and amended applications for the issuance of warrants of arrest, the OTP requested sealing on the grounds that immediate disclosure of the warrant application could: (1) subject vulnerable groups in Uganda, including victims and witnesses, to the risk of retaliation by the LRA; and (2) undermine continuing investigative efforts, particularly if further protective measures relating to victims and witness were not implemented before unsealing. *See* Amended Application for Warrants of Arrest Under Article 58, paras. 9, 13. On this basis, the OTP requested that the proceedings relating to the warrant application remain sealed until either the security conditions in potentially affected areas improve or further protection measures can be arranged." *See* Amended Application for Warrants of Arrest Under Article

² Upon unsealing of the warrants of arrest, the OTP submits that it will also be appropriate to unseal this application, with the exception of the last four sentences of paragraph 14 and footnotes 4 and 5.

58, para. 12. To date, the Chamber has sealed all applications, decisions and transcripts relating to the initial and amended warrant applications.

4. On 16 June 2005, and again on 21 June 2005, this Chamber conducted hearings during which the Chamber gathered information regarding, *inter alia*, protective measures being implemented jointly by the OTP and the VWU. On both occasions, the OTP reported protective measures it had already undertaken, in conjunction with the VWU, and described the security assessment then underway in Northern Uganda to ensure that adequate protective measures were in place before the OTP requested unsealing of any arrest warrants issued by the Court and transmission was attempted. *See, e.g.*, 16 June 2005 Tr., page 69, 74, 80-81. On 8 July 2005, this Chamber issued sealed warrants of arrest, and sealed requests for arrest and surrender, naming LRA commanders Joseph KONY, Vincent OTTI, Raska LUKWIYA, Okot ODHIAMBO, and Dominic ONGWEN. *See* Decision on Prosecutor's Application For Warrants of Arrest Under Article 58, pages 3, 8. On the same date, the Chamber noted that the Prosecutor's overall plan for the security of witnesses and victims in the field, as being developed in cooperation with the Victims and Witnesses Unit, is still ongoing and is yet to be completed." *See* Decision on Prosecutor's Application For Warrants of Arrest Under Article 58, page 8. The Chamber also found that there was a need for the Chamber to be properly and regularly informed of steps being taken to develop and implement security measures in the field" *See* Decision on Prosecutor's Application For Warrants of Arrest Under Article 58, page 8.
5. On 18 July 2005, the Chamber issued, under seal, its Decision on the Prosecutor's Motion for Clarification and Urgent Request for Variation of the

Time-Limit Enshrined in Rule 155.” In pertinent part, the Chamber decided that the OTP and the VWU should continue the process of consultation and cooperation it had undertaken with respect to implementing the necessary and appropriate security scheme for victims and witnesses” prior to transmission of the warrants of arrest. See Decision on the Prosecutor’s Motion for Clarification and Urgent Request for Variation of the Time-Limit Enshrined in Rule 155, pages 3, 4.

B. Application for Unsealing of Warrants of Arrest and Certain Amendments to Warrants and Request for Arrest and Surrender of Joseph KONY

6. As the Chamber is aware, since the amended warrant application was submitted, nearly four months ago, the OTP and the VWU have focused joint efforts nearly exclusively on matters relating to victim and witness protection. This coordinated effort has entailed, among other things, numerous missions to the field, including joint OTP/VWU missions, dedicated to victim and witness security issues, including:

[REDACTED]

7. The primary reason for this request for unsealing is that, in the last weeks, the OTP and the VWU have nearly completed implementation of the overall plan for the security of witnesses and victims in the field.

8. The components of the security plan which has been implemented will not be described in detail here, because the confidentiality of the details of the protection measures should be maintained if the measures themselves are to remain effective. The OTP respectfully requests that the Chamber convene a hearing, at which the measures taken and yet planned may be described and to afford the Chamber an opportunity to pose any questions. The transcript of that proceeding could be sealed so as to protect the means and methods employed by the OTP, the VWU, and their representatives in the field to safeguard the well-being of victims, witnesses, and their families.

[REDACTED]

- 9.

[REDACTED]

10.

11. There is manifestly no means of fully anticipating the LRA's actions or capabilities. Moreover, in the context of an ongoing conflict, victims and witnesses at all times face a risk of suffering from continued LRA threats and/or attacks, independent of the fact that they provided information in this investigation. Nonetheless, the OTP believes that: (a) it has obtained and evaluated the best available information on LRA movements and capabilities; (b) in consultation with the VWU, it has implemented and/or planned the

³ Assessments are shared on an ongoing basis with the VWU.

measures specified in paragraphs 9 and 10 above to address any incremental risks faced by victims, potential witnesses and their families because of their cooperation in the ongoing investigation;

[REDACTED]

12. Once the OTP and the VWU have completed implementing the overall plan for security in the field, the unsealing of the warrants of arrest itself becomes a feasible and potentially powerful means of garnering international attention and support for arrest efforts, thus further ensuring the protection of victims, potential witnesses, and their families. Arrest of the named persons, who are among the top leaders in the LRA, would obviously represent a milestone in improving the security in Northern Uganda. Information from the sources consulted by the OTP uniformly establish that, at present, although the LRA continues to commit crimes, the capability of the LRA to mount large-scale attacks or attacks against symbolic targets is at its lowest point since the beginning of its campaign into the Teso region, which began in approximately June 2003. The same sources confirm that the LRA is currently travelling in small groups and is conducting smaller-scale ambushes of vehicles and civilians as a means of obtaining primarily money and food. Arrest of top LRA leaders is a means of further incapacitating an organization which is at present already demonstrating a significantly diminished ability to carry out attacks upon civilians.
13. Based on the factors and circumstances described herein, the OTP requests unsealing of the warrants of arrest. As is noted above, the OTP and/or the

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VWU stand ready to further discuss the implementation of the overall security plan with the Pre-Trial Chamber, upon the Chamber's request.

14. The OTP requests that if the Chamber determines to grant the application for unsealing, certain of the warrants of arrest dated 8 July 2005 be unsealed in a slightly redacted and amended form.

[REDACTED]

15. In addition, in the warrant seeking the arrest of Joseph KONY only, in paragraph 48, the OTP requests an amendment, namely, that the phrase "Gulu Town," be redacted and replaced with "Omoror County." The OTP

[REDACTED]

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had previously mistakenly identified Gulu town" as the birthplace of JOSEPH KONY. Omoro County" is the most precise birthplace which can be stated with a high degree of certainty. While the need for the correction is regrettable, the OTP respectfully submits that because the proposed amendment relates to information which will be used to confirm the identity of the named person upon arrest, it is prudent to amend the warrant.

16. The OTP also respectfully requests a corresponding amendment to the request for arrest and surrender of Joseph KONY. That document, like the warrant of arrest for Joseph KONY, mistakenly names Gulu Town" as KONY's birthplace. Amendment of the document before transmission will ensure that there is no unnecessary confusion about the identity of the person whose arrest is sought.
17. The OTP respectfully submits that to maintain the clarity of the record and the chronology of events thus far, it would be appropriate to unseal and make public the original warrants of arrest dated 8 July 2005, albeit in perhaps a slightly redacted form, rather than to issue new documents. For this reason, the OTP has not requested the redaction of references to the warrants having been issued on a sealed basis, for example. The order of unsealing, once entered, will serve to explain that the warrants were subsequently unsealed. To avoid confusion, it might be prudent to superimpose upon each page of the warrants, once they are unsealed, a stamp stating "unsealed" or "unsealed, in redacted and amended form" and bearing the date of unsealing.

[REDACTED]

[REDACTED]

18.

C. *Consequences of Unsealing for Other Court Documents*

19. The unsealing of the warrants of arrest, if ordered, has consequences for other documents and transcripts which have been sealed because of their relation to the warrants of arrest.
20. The OTP respectfully requests that the requests for arrest and surrender remain under seal. The content of the requests, unlike the warrants of arrest, constitute bilateral requests for international cooperation from the Court to the requested State. Under the Rome Statute, the State is obligated to maintain confidentiality as to the request. *See* Article 87(3) (requiring a requested State to maintain the confidentiality of the request for cooperation

and any documents supporting the request). We respectfully submit that unsealing of the requests for arrest and surrender would therefore be inappropriate at this time.

21. The OTP has a strong preference that the Amended Application for Warrants of Arrest under Article 58, filed 20 May 2005, and the original Application for Warrants of Arrest, filed 6 May 2005, remain sealed, for victim and witness protection purposes. The VWU has also been consulted in this matter. As the Chamber is aware, both versions of the warrant application describe in detail the evidence gathered in the investigation. Even extensive redacting of the application will not prevent the exposing of witness accounts sufficient to render certain witnesses and victims highly identifiable. In addition, the warrants of arrest themselves contain a synopsis of the evidence described in the amended warrant application, and there is no possible prejudice to any accused from the continued sealing of the document so long as the warrant application is disclosed to any accused upon arrest.
22. If the Chamber is inclined nonetheless to unseal the latter version of the warrant application in addition to the warrants of arrest, the OTP requests notification of that decision as soon as is practicable, in order that: (1) the OTP and the VWU may take further witness protection measures in the field; and (2) the OTP may, again after consultation with the VWU, submit a redacted and amended version of the Amended Warrant Application.⁶

⁶ The OTP had previously submitted a proposed redacted form of the Amended Warrant Application, *see* Prosecutor's Proposed Redacted Version of the Amended Application for Warrants of Arrest Under Article 58, filed 20 May 2005, while noting that it might propose further redactions based on changed circumstances closer to the time of any transmission of a request for cooperation. *See id.*, para. 6.

23. The OTP is currently reviewing the other documents and transcripts which are now under seal. For some, the OTP believes that a rationale persists for continuing to maintain the sealing, in whole or in part. For example, the OTP will propose continued sealing of information tending to identify witnesses and victims, or information about witness and victim protection measures which, if revealed, would undermine the effectiveness of those measures. The OTP anticipates submitting, within a week's time and after further consultation with the VWU on any matters relating to victim and witness protection, an application for the Chamber's review containing proposals with respect to the unsealing or continued sealing of all or portions of documents and transcripts currently under seal.

CONCLUSION

24. For all of the above explained reasons, the Prosecution respectfully requests that the Pre-Trial Chamber: (1) order the warrants of arrest for Joseph KONY, Vincent OTTI, Raska LUKWIYA, Okot ODHIAMBO, and Dominic ONGWEN to be unsealed, in certain cases in redacted and amended form, on 28 September 2005, or as soon thereafter as the Chamber is satisfied that necessary and adequate protective measures have been implemented; (2) determine to amend the request for arrest and surrender of Joseph KONY; (3) schedule a hearing at which the OTP may describe for the Chamber the impending completion of the implementation of necessary and appropriate victim and witness protection measures; and

[REDACTED]


Luis Moreno Ocampo
Prosecutor

Dated this 9th day of September, 2005

At The Hague, The Netherlands