

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

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

Date: 7 February 2007

PRE-TRIAL CHAMBER II

Before: Judge Mauro Politi, Single judge

Registrar: Mr Bruno Cathala

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

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

**URGENT
Confidential**

**Ex parte only available to the Office of Public Counsel for Victims and the Victims
Participation and Reparations Section**

**Decision on "Request to access documents and material", and to hold a hearing *in
camera* and *ex parte***

The Office of the Prosecutor

Mr. Luis Moreno Ocampo, Prosecutor

Ms. Fatou Bensouda, Deputy Prosecutor

Ms. Christine Chung, Senior Trial

Lawyer

Office of Public Counsel for Victims

Ms. Paolina Massidda

Ad hoc Counsel for the Defence

Ms. Michelyne St-Laurent

I, Mauro Politi, Single Judge at the International Criminal Court (the "Court");

NOTING the "Decision designating a Single Judge for victims' issues", dated 22 November 2006,¹

NOTING the request by the Office of Public Counsel for Victims ("the OPCV" or "the Office") dated 5 February 2007 ("the Request"),² requesting the Single Judge (i) to order the Registrar to provide the OPCV with the unredacted version of the warrants of arrest issued in the situation in Uganda pursuant to Pre-Trial Chamber II decision dated 8 July 2005 ("the Warrants")³; (ii) to order the Registrar to provide the Principal Counsel with the index of the records of the situation and of the case; (iii) to identify any document or material under seal or confidential, which the Single Judge would consider necessary *"to disclose to the OPCV for the carrying out of the tasks"* entrusted to it pursuant to the Single Judge's *"Decision on legal representation, appointment of counsel for the defense, protective measures and time-limit for submission of observations on applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/111/06 to a/0127/06"* ("the Decision")⁴ and to order the Registrar to transmit the documents or material thus identified to the OPCV, or, in the alternative, to authorise the OPCV, in the person of its Principal Counsel, to consult the records of the situation and of the case *"in order to identify any confidential and/or under seal document and/or material which may be necessary to disclose to the OPCV"*;

NOTING that the OPCV substantiates the need for it to have access to the Warrants by referring to its task of providing support and assistance to the applicant victims in the situation and in the case pursuant to the Decision;

¹ ICC-02/04-01/05-130.

² ICC-02/04-01/05-149-Conf-Exp.

³ Warrants of arrest for Joseph KONY (ICC-02/04-01/05-28-US-Exp); Vincent OTTI (ICC-02/04-01/05-4-US-Exp); Raska LUKWIYA (ICC-02/04-01/05-6-US-Exp); Okot ODHIAMBO (ICC-02/04-1/05-8-US-Exp); and Dominic ONGWEN (ICC-02/04-01/05-10-US-Exp).

⁴ ICC-02/04-01/05-134.

NOTING the functions and powers vested in the Pre-Trial Chamber pursuant to article 57, paragraph 3(c), of the Statute of the Court ("the Statute"), in particular as concerns the protection and privacy of victims and witnesses;

NOTING also articles 54, paragraph 3(e); 67, paragraph 1; 68 of the Statute; rules 15 and 87 of the Rules of Procedure and Evidence ("the Rules"); regulation 8 of the Regulations of the Court ("the Regulations") and regulation 14 of the Regulations of the Registry;

CONSIDERING that, for the purpose of the tasks entrusted to the OPCV in the Decision, it appears indeed necessary for the OPCV to have access to the unredacted version of the Warrants, in particular with a view to it being apprised of the specific scope and the factual features of the charges brought against the persons whose arrest is sought by the Court;

NOTING the "*Décision relative à la levée des scellés et à la reclassification de certains documents dans les dossiers de la situation et de l'affaire et annexes*" issued by Judge Fatoumata Dembele Diarra, Single Judge responsible for the issues of unsealing in the situation and in the case, on 2 February 2007 (la "*Décision relative à la levée des scellés*"),⁵ resulting in a significant increase of the amount of publicly accessible documents, whether in whole or in part, in the record both of the situation and of the case;

CONSIDERING that providing access by the OPCV to the index of the record of the situation and of the case would be tantamount to disclosing to the OPCV the existence of all the documents included in the record of the situation and of the case,

⁵ ICC-02/04-01/05-135.

including those documents still classified as confidential or under seal and which may not be relevant for the proper discharge of the tasks entrusted to the Office by the Decision;

CONSIDERING that authorising the OPCV to consult the record of the situation and of the case would be tantamount to granting the Office unlimited access to such records, including to information which is still classified as confidential or under seal and which may not be relevant for the proper discharge of the tasks entrusted to it by the Decision;

CONSIDERING that, prior to determining whether to transmit to the OPCV any documents or material other than public included in the record of the situation and/or of the case, there is a need for the Single Judge to determine, on the basis of additional information on the Request, to what extent access by the OPCV to such documents would be instrumental to the tasks entrusted to the Office by the Decision at this stage;

NOTING that the Office indicates that its Principal Counsel *"is undertaking a mission in Uganda from 14 until 28 February 2007 with a view to provide assistance and support to the applicants"*;

CONSIDERING that there is a need for the Single Judge to be apprised of and clarify whether and, in the affirmative, the modalities whereby the Principal Counsel envisages contacting the applicant victims, with a view to ensuring their security and the consistency between the planned mission and the scope of the tasks entrusted to the OPCV by the Decision;

NOTING regulation 46, sub-regulation 2, of the Regulations, whereby the Pre-Trial Chamber shall be responsible for any matter, request or information arising out of the situation assigned to it; regulation 28, sub-regulations 1 and 2, of the Regulations, respectively allowing the Chamber to order the participants to clarify or to provide additional details on any document or to address specific issues in their oral submissions; and regulation 20, sub-regulation 2, of the Regulations, vesting a Chamber with the power to hold a hearing in closed session, subject to the need to make public the reasons for such an order;

CONSIDERING that the provision by the OPCV of information on its forthcoming mission in Uganda may entail the disclosure of sensitive and confidential information and that such information should not be heard in public at this stage;

FOR THESE REASONS

ORDER the Registrar to provide, at his earliest convenience and no later than Thursday 8 February 2007, the OPCV with the unredacted version of the Warrants;

REJECT the OPCV's request to have access to the index of the record of the situation and of the case;

REJECT the OPCV's request to authorise the OPCV to consult the record of the situation and of the case;

DECIDE to hold a hearing *in camera* and *ex parte* on Monday 12 February 2007 at 2 pm to be attended by the Office of Public Counsel for Victims and the Victims

Participation and Reparations Section, with a view to considering the following issues:

1. In what way and to what extent access by the OPCV to documents or material other than public included in the record of the situation and/or of the case would be instrumental to the tasks entrusted to the Office by the Decision at this stage;
2. The scope and purpose of the Office's planned mission in Uganda, with particular regard to the envisaged modalities for contacting victims.

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



Judge Mauro Politi
Single judge

Dated this 7 February 2006

At The Hague, The Netherlands