

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/04-01/05
Date: 18 November 2008

PRE-TRIAL CHAMBER II

Before: Judge Mauro Politi, Presiding Judge
Judge Hans-Peter Kaul
Judge Ekaterina Trendafilova

**SITUATION UGANDA
IN THE CASE OF
THE PROSECUTOR
*v. JOSEPH KONY, VINCENT OTTI, OKOT ODHIAMBO & DOMINIC ONGWEN***

**Public Document
with Public Annexes A, B and D and
Confidential, Ex Parte Prosecutor and Defence Annex C**

**Prosecution's Observations regarding the Admissibility of the Case against
Joseph KONY, Vincent OTTI, Okot ODHIAMBO and Dominic ONGWEN**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Counsel for the Defence

Mr Jens Dieckmann

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massida

**The Office of Public Counsel for the
Defence**

States Representatives

The Government of the Republic of
Uganda

Amicus Curiae

The Uganda Victims' Foundation
Redress Trust

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Background

1. On 21 October 2008, Pre-Trial Chamber II (the "Chamber") rendered its "Decision initiating proceedings under article 19(1), requesting observations and appointing counsel for the Defence"¹ (the "Decision") whereby all participants to the proceedings were invited to file observations on the question of the admissibility of the case against Joseph KONY, Vincent OTTI, Okot ODHIAMBO and Dominic ONGWEN (the "Suspects")² pursuant to Article 17 of the Rome Statute (the "Statute").

2. The Decision noted two documents of relevance to the present proceedings:
 - (a) the "Agreement on Accountability and Reconciliation Between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement," (the "Principal Agreement") signed on 29 June 2007, and envisaging, *inter alia*, the establishment of national legal arrangements for ensuring justice, reconciliation and the accountability of individuals alleged to have committed serious crimes or human rights violations in the course of the Northern and North-Eastern Uganda conflict (the "Agreement");³

 - (b) the "Annexure to the Agreement on Accountability and Reconciliation" (the "Annexure"), providing for the establishment of a special division of the High Court of the Republic of Uganda (the "Special Division"), entrusted with the task of "try[ing] individuals who are alleged to have

¹ ICC-02/04-01/05-320.

² The Prosecution clarifies its position that the current admissibility proceedings should be considered moot in relation to the warrant of arrest against Vincent OTTI. On 7 October 2008, the Prosecution submitted an *ex parte* application to Pre-Trial Chamber II (ICC-02/04-01/05-315-US-Exp) requesting that the warrant of arrest against Vincent OTTI be withdrawn. In support of this application, the Prosecution submitted evidence demonstrating that Vincent OTTI had been executed by order of Joseph KONY.

³ The Agreement is appended hereto as Annex A.

committed serious crimes during the conflict in Uganda” (the “Annexure”).⁴

Submission

3. The Prosecution recalls that the investigation into the situation as a whole was initiated pursuant to a formal referral by the Government of the Republic of Uganda (“GoU”) on 16 December 2003. This letter of referral made specific reference to “the situation concerning the Lord’s Resistance Army” (“LRA”).⁵
4. The Prosecution subsequently informed the GoU that, in accordance with the principles of the Rome Statute, it would interpret the scope of the referral to encompass all crimes committed within the situation of Northern Uganda - irrespective of who committed them.⁶
5. On 28 May 2004, the GoU indicated that it had not conducted, nor did it intend to conduct, criminal proceedings relating to acts committed by the LRA leaders.⁷
6. After extensive analysis of other statutory requirements under Article 53 of the Statute, the Prosecution determined that there was a reasonable basis to believe that crimes within the jurisdiction of the Court had been committed and that potential cases arising therefrom would be admissible.⁸

⁴ The Annexure is appended hereto as Annex B.

⁵ ICC-02/04-8-Conf-Exp-AnxA.

⁶ “Statement of the Prosecutor Luis Moreno Ocampo to Diplomatic Corps”, The Hague, Netherlands, 12 February 2004 (available at http://www.icc-cpi.int/library/organs/otp/LOX/20040212_Fu.pdf (last accessed 18 November 2008)).

⁷ See ICC-02/04-8-Conf-Exp-AnxC, “Letter of Jurisdiction” dated 28 May 2004 addressed to the Prosecutor from the GoU; and the Prosecutor’s response thereto of 12 July 2004 appended hereto as confidential, *ex parte* Prosecutor and Defence Annex C.

⁸ This position was later endorsed by Pre-Trial Chamber II when it issued warrants for arrest citing the GoU’s admissions that it “has not conducted and does not intend to conduct national proceedings” in respect thereof. On this basis, Pre-Trial Chamber II decided that the case against the Suspects “falls within the jurisdiction of the Court and appears to be admissible.”; cf. ICC-02/04-01/05-53 at paragraphs 37 & 38.

7. Consequently, on 28 July 2004, pursuant to Article 18(1) of the Statute, the Prosecutor sent notification of his decision to initiate an investigation to all States Parties and to those States which would normally exercise jurisdiction over the crimes concerned.⁹
8. Despite such notification, no State has, to date, challenged the admissibility of the case by informing the Office of the Prosecutor (“OTP”) or the Court, pursuant to Articles 18(2) and 19(2)(b) respectively of the Statute, of any past or current investigation or prosecution of crimes within the jurisdiction of the Court.
9. The Prosecution has, furthermore, constantly monitored the situation and, to date, has not identified any national proceeding related to the current case. Accordingly, the Prosecution maintains its position, which it has stated in the past,¹⁰ that the absence of national proceedings defines the admissibility of the present case.
10. The Prosecution submits that the admissibility of the present case is not affected by the ongoing attempts at negotiations with the LRA which have engendered, *inter alia*, both the Agreement and the Annexure.¹¹

⁹ The Prosecutor’s letter of notification to States Parties dated 28 July 2004 is appended hereto as Annex D.

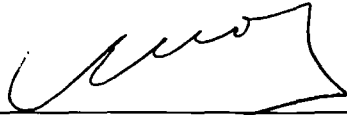
¹⁰ ICC-02/04-8-US-Exp; Prosecutor’s amended application for warrants of arrest under Article 58, 18 May 2005.

¹¹ In the context of the so-called “Juba Peace Process”.

Conclusion

11. The Prosecution submits that the present case remains admissible.

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Luis Moreno-Ocampo, Prosecutor

Dated this 18th day of November 2008

At The Hague, The Netherlands