

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

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

Date: 21 September 2005

Original: English

PRE-TRIAL CHAMBER II

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

Registrar: Mr Bruno Cathala

SITUATION IN UGANDA

Under Seal
Ex Parte, Prosecutor only

**ORDER FOR THE PROVISION OF ADDITIONAL INFORMATION RELATING
TO THE PROSECUTOR'S 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

PRE-TRIAL CHAMBER II (the “Chamber”) of the International Criminal Court (the “Court”);

SITTING as the full Chamber, pursuant to the Chamber’s decision on the 18th day of May 2005;

HAVING received the Prosecutor’s “Application for Unsealing of Warrants of Arrest Issued on 8 July 2005, and Other Related Relief” dated the 9th day of September 2005 (the “Prosecutor’s application for unsealing”) and the Prosecutor’s “Application Proposing Treatment of Submissions, Transcripts, and Decisions Which Are Currently Sealed, In the Event That Warrants of Arrest Are Unsealed” dated the 14th day of September 2005;

NOTING the request made in the Prosecutor’s application for unsealing, *inter alia*, for the Chamber to order that the warrants of arrest for Joseph KONY, Vincent OTTI, Raska LUKWIYA, Okot ODHIAMBO and Dominic ONGWEN (the “Warrants”) be unsealed, in certain cases in redacted and amended form, on the 28th day of September 2005, or as soon thereafter as the Chamber is satisfied that necessary and adequate protective measures have been completed and implemented;

NOTING the reasons advanced by the Prosecutor in support of the request for the Warrants to be unsealed, namely, that the Office of the Prosecutor (the “OTP”) and the Victims and Witnesses Unit (the “VWU”) “have nearly completed implementation of the overall plan for the security of witnesses and victims in the field”; and that once this overall plan has been completed and implemented the unsealing of the Warrants would become “a feasible and powerful means of

garnering international attention and support for arrest efforts, thus further ensuring the protection of victims, potential witnesses and their families”;

RECALLING the “Prosecutor’s application for Warrants of Arrest under Article 58” dated the 6th day of May 2005, as amended and supplemented by the Prosecutor on the 13th day of May 2005 and on the 18th day of May 2005 (the “Prosecutor’s application for warrants of arrest”), and the principal request made therein that all the proceedings relating to the Prosecutor’s application for warrants of arrest, including the existence of the application, be treated as and kept under seal, with a view, firstly, to ensuring that vulnerable groups in Uganda, including victims and persons living in areas mentioned in the application, were not put at risk of retaliatory attacks by the Lord’s Resistance Army (the “LRA”) as a result of the Prosecutor’s application for warrants of arrest; and secondly, to ensuring that continuing investigative efforts were not undermined, particularly those affecting or relating to the protection and security of victims and witnesses;

RECALLING further the Chamber’s “Decision on the Prosecutor’s Application for Warrants of Arrest under Article 58” dated the 8th day of July 2005, in which the Chamber ordered that the Prosecutor’s application for warrants of arrest and the proceedings relating thereto, including the warrants of arrest issued and the requests for arrest and surrender, be treated as under seal and be kept under seal until further order of the Chamber;

NOTING the role and functions of the Chamber under article 57, paragraph 3 (c), of the Statute of the Court (the “Statute”) with respect to the protection and privacy of victims and witnesses, the preservation of evidence and the protection of persons who have been arrested; as well as under article 57, paragraph 3 (e), of the Statute

and rule 99 of the Rules of Procedure and Evidence (the "Rules") with respect to protective measures for the purposes of forfeiture;

NOTING that under article 68, paragraph 1, of the Statute, "the Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses", and that under the same provision "[t]he Prosecutor shall take such measures particularly during the investigation";

NOTING regulation 28 of the Regulations of the Court (the "Regulations"), pursuant to which a Chamber may order a participant to clarify or provide additional details on any document; and regulation 48, sub-regulation 1, of the Regulations, pursuant to which the Chamber may request the Prosecutor to provide additional information in order to exercise the functions and responsibilities set forth in, *inter alia*, article 57, paragraph 3 (c), of the Statute;

RECALLING the Chamber's request as contained in its decision dated the 8th day of July 2005 for the Prosecutor, in consultation and cooperation with the Registrar and the VWU, to inform the Chamber on a periodic and regular basis as to developments concerning the implementation of protective and security measures in the field;

NOTING the intention of the Prosecutor, as expressed in the first introductory paragraph to the Prosecutor's application for unsealing, to report further to the Chamber upon the completion and implementation of protective measures before the 28th day of September 2005;

NOTING article 43, paragraph 6, of the Statute, as well as article 68, paragraph 4, pursuant to which the VWU may provide to the Chamber advice on appropriate

protective measures, security arrangements, counselling and other assistance for witnesses, victims and other persons who are at risk;

CONSIDERING it essential for the determination of the Prosecutor's application for unsealing that the Chamber be fully informed of the arrangements relating to the protective measures referred to in the Prosecutor's application, as developed jointly or in cooperation between the OTP and VWU, including the impact or likely consequences on the security of victims and witnesses, if the application were to be granted;

HAVING REGARD THERETO AND FOR THESE REASONS;

THE CHAMBER HEREBY:

1. **REQUESTS** the Prosecutor, in consultation and cooperation with the Registrar and the VWU, to provide to the Chamber, on or before Tuesday, the 27th day of September 2005, a written report on the current status of the overall plan for the security of witnesses and victims of the situation in Uganda, including all measures taken or to be set in place to ensure the safety or physical or psychological well-being of victims, potential witnesses and their families, and, in particular, of those persons mentioned in the Prosecutor's application for warrants of arrest; and, if at that date the overall plan has not been completed, to indicate the date of its scheduled implementation and completion;

2. **REQUESTS** the Prosecutor to provide to the Chamber in writing, on or before Tuesday, the 27th day of September 2005, additional information and detailed answers to the following questions, namely:

Question 1:

In the Prosecutor's application for warrants of arrest, at paragraph 10, it was noted that "there is a compelling interest in withholding from the public information about the seeking of arrest of LRA commanders at any time when the leadership remains at large and the LRA remains capable of carrying out targeted operations in Uganda"; and further, at paragraph 11 of the Prosecutor's application for unsealing, it is stated that "[t]here is no means of fully anticipating the LRA's actions or capabilities." In light of these concerns about the risk of LRA threats and/or attacks, what, if any, are the consequences of the unsealing of the Warrants or of other related documents for (i) the protection of victims and witnesses; and (ii) the overall safety of the civilian population in Uganda? What precise measures have been taken to respond to the concerns that motivated the sealing of the Warrants and other documents (concerns which are reaffirmed by the impossibility of fully anticipating the actions of the LRA), and how have such concerns been addressed to the extent that the seal on the Warrants can now be sought to be lifted? What circumstances have led the Prosecutor to state that "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" (see paragraph 12 of the Prosecutor's application for unsealing)?

Question 2:

Having regard to the interests of victims and witnesses and the arrangements for their protection, what is the urgency, if any, or other particular reason, for the setting of the 28th day of September 2005 as the target date for lifting the seal on the Warrants?

Question 3:

Noting that the Warrants as issued by the Chamber are now in executable form, subject only to the arrangements being in place for the protection of victims and witnesses, how would unsealing improve the prospects for the successful execution of the Warrants; and specifically, in what way would unsealing of the Warrants improve the ability of the Ugandan authorities to execute these Warrants? Conversely, how would the transmission of sealed warrants of arrest hinder the execution of these warrants?

Question 4:

On what grounds does the Prosecutor justify the statement (at paragraph 12 of the Prosecutor's application for unsealing) that unsealing "becomes a feasible and potentially powerful means of garnering international attention and support for arrest efforts"? How would an unsealing of the Warrants or of other related documents enhance the expected support of countries whose cooperation is essential to the successful execution of the Warrants?

Question 5:

In the Prosecutor's application for warrants of arrest, it was pointed out (at paragraph 13) that "continuing the investigation under the current condition

of confidentiality best serves the interests of the investigation, as well as those of potentially vulnerable groups". In addition, it was noted (at paragraph 13) that "[p]ublicising warrants of arrest before any warrants issued by this Court are *executed* [emphasis added]... could cause information providers and witnesses to withdraw support for the investigation". To what extent and in which way have the risks presented in the Prosecutor's application for warrants of arrest, and in particular those highlighted in paragraph 13, been eliminated? What implications, if any, would the unsealing of the Warrants or of other related documents at this stage have for (i) ongoing and future investigations, including the preservation of evidence, and (ii) persons whose arrests may be sought in the future?

Question 6:

Does the Prosecutor request that the Warrants and their content be treated as public documents without further requirement for confidentiality (subject to the redactions proposed in the Prosecutor's application for unsealing and application dated the 14th day of September 2005) in the event that the Warrants were to be unsealed? If the Chamber were to grant the application, what modalities does the Prosecutor envisage for publicising the unsealing of the Warrants (for example, press conference, public information) and how does the Prosecutor view the respective roles of the relevant organs or units of the Court (OTP, Public Information Unit, the Chamber) in this regard?

Question 7:

What legal basis does the Prosecutor invoke in support of his request for the amendment of the warrant of arrest and the request for arrest and surrender

for Joseph KONY and for the substitutions requested in paragraph 14 of the Prosecutor's application for unsealing?

3. **REQUESTS** that the VWU provides to the Chamber in writing, on or before Tuesday, the 27th day of September 2005, a detailed answer to the following question, namely:

Question 1:

What would be the impact, if any, of the unsealing of the Warrants or of other related documents:

- (i) on the overall plan for protective measures for victims and witnesses as envisaged and implemented by the VWU in cooperation with the OTP and on its completion;
- (ii) on the overall safety of the population at risk from LRA attacks in Uganda; and
- (iii) on the ability of the Chamber to take any and all measures which might be necessary or appropriate for the purpose of forfeiture pursuant to article 57, paragraph 3 (e), of the Statute.

4. **REQUIRES** this order to be kept under seal, until further order by the Chamber.

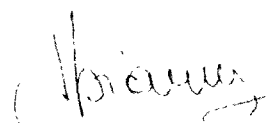
Done in both English and French, the English version being authoritative.



Judge Tuiloma Neroni Slade
Presiding Judge



Judge Mauro Politi



Judge Fatoumata Dembele Diarra

Dated this 21st day of September 2005

At The Hague, The Netherlands

Seal of the Court