

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-02/04-01/05
Date: 17 November 2006

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

Public Document

DECISION ON PROSECUTOR'S APPLICATION DATED 2 NOVEMBER 2006

The Office of the Prosecutor

Mr Luis Moreno Ocampo, Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor

Ms Christine Chung, Senior Trial Lawyer

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

HAVING RECEIVED the Prosecutor’s “Application Regarding Decision on the Prosecutor’s Request to Separate the Senior Legal Adviser to the Pre-Trial Division from Rendering Legal Advice Regarding the Case” dated 2 November 2006¹ (the “Prosecutor’s Application”), whereby the Prosecutor requested the Chamber to “consider providing clarification” of its decision dated 31 October 2006² (the “Decision”) arguing (i) that the reasoning behind the Chamber’s decision to dismiss the Prosecutor’s application to separate the Senior Legal Adviser was “unexplained but could become relevant in future proceedings”; and (ii) that it considered “in the absence of any elaboration by the Chamber, that the Decision [did] not render any decision on the merits, thus explaining, *inter alia*, [the] Chamber’s referral of the matter to the Plenary”;

NOTING that the Prosecutor’s Application is not based on any procedural remedy provided for in the statutory instruments of the Court, as shown also by the failure by the Prosecutor to provide “details of the articles, rules, regulations or other applicable law relied upon”, and this contrary to regulation 23(1)d of the Regulations of the Court (the “Regulations”);

CONSIDERING that, in the light of its content, the Prosecutor’s Application constitutes a motion for clarification addressed to the Chamber;

¹ ICC-02/04-01/05-125.

² ICC-02/04-01/05-124.

RECALLING that the Chamber has already ruled, in its decisions dated the 18 July 2005³ and 28 October 2005⁴, that the instruments governing the procedure before the Court make no provision for a motion for clarification;

REITERATING the need that all participants in the proceedings comply with the procedures provided for in the Statute of the Court (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”)⁵; and that allowing any participant in the proceedings to disregard the specific procedural basis of the Statute would inevitably result in defeating the Statute’s prescriptive approach towards remedies before the Court, thereby significantly disrupting the procedural mechanism as devised in the Court’s constitutive instruments⁶;

RECALLING that the only remedy of a general nature available to participants wishing to raise objections *vis-à-vis* a decision other than final is the interlocutory appeal provided under article 82 (1) d of the Statute, admissible only under the limited and very specific circumstances stipulated in this provision, within a five-day time-limit and subject to the need for the appeal to be authorized by the Chamber having issued the decision, as originally ruled by this Chamber⁷ and also held by Pre-Trial Chamber I⁸;

**HAVING REGARD THERETO AND FOR THESE REASONS, THE CHAMBER
HEREBY**

DISMISSES the Prosecutor’s Application.

³ ICC-02/04-01/05-18, page 2.

⁴ ICC-02/04-01/05-60, paragraph 25.

⁵ ICC-02/04-01/05-60, paragraph 13.

⁶ ICC-02/04-01/05-60, paragraph 23.

⁷ ICC-02/04-01/05-60, paragraph 20.

⁸ ICC-01/04-01/06-123, page 3.

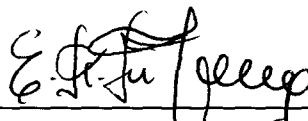
Done in both English and French, the English version being authoritative.



Judge Mauro Poli
Presiding Judge



Judge Fatoumata Dembele Diarra



Judge Ekaterina Trendafilova

Dated this 17 November 2006

At The Hague