

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-02/04-01/05
Date: 12 November 2008

PRE-TRIAL CHAMBER II

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

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

Public Document

Order to the Prosecutor to file redacted versions of documents in the record

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

The Office of the Prosecutor

Mr Luis Moreno Ocampo

Ms Fatou Bensouda

Counsel for the Defence

Mr Jens Dieckmann

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

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

States Representatives

The Government of the Republic of
Uganda

Amici Curiae

The Uganda Victims' Foundation
Redress Trust

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Mr Didier Preira

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

The Judges of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court”);

1. **NOTING** the “Decision assigning the situation in Uganda” to Pre-Trial Chamber II issued by the Presidency on 5 July 2004¹;
2. **NOTING** the “Decision initiating proceedings under article 19, requesting observations and appointing counsel for the Defence” dated 21 October 2008, whereby the Chamber decided to initiate proceedings under article 19(1) of the Statute (the “Proceedings”), appointed Mr Jens Dieckmann as counsel for the Defence within the context and for the purposes of such proceedings and invited the Republic of Uganda, the Prosecutor, the counsel for the Defence (the “Defence”) and victims having already communicated with the Court with respect to the case of *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen* (the “Case”), or their legal representatives, to submit their observations on the admissibility of the Case by 10 November 2008;²
3. **NOTING** the “Decision on Defence Counsel’s ‘Request for conditional stay of proceedings’” dated 31 October 2008 (the “31 October 2008 Decision”), whereby the Chamber *inter alia* rejected the “Request for conditional stay of proceedings”³ by the Defence (the “Defence’s Request”) and extended the time limit for the Republic of Uganda, the Prosecutor, the Defence and the victims having communicated with the Court with respect to the Case to submit observations in the Proceedings until 18 November 2008⁴;
4. **NOTING** that the Defence’s Request also petitioned for access to a number of documents in the record, or to a redacted version thereof;

¹ ICC-02/04-1.

² ICC-02/04-01/05-320.

³ ICC-02/04-01/05-325.

⁴ ICC-02/04-01/05-328.

5. **NOTING** that, in its 31 October 2008 Decision, the Chamber considered it appropriate that the Defence be provided with a redacted version of some of the documents it requested (namely, the transcripts of the hearings held in closed session before the Chamber on 16 June 2005, 21 June 2005 and 3 October 2005; the "Prosecutor's submission of proposed forms of warrants of arrest and notification of amendment to application for warrants of arrest", dated 13 May 2005⁵; the "Prosecutor's proposed redacted version of amended application for warrants of arrest under article 58", dated 18 May 2005⁶ and the "Prosecutor's amended application for warrants of arrest under article 58", dated 18 May 2005⁷ - the "Prosecutor's Amended Application": collectively, the "Documents Requested by the Defence"), from which all information which might be sensitive for the security and safety of victims and witnesses would have to be expunged;
6. **NOTING** that, accordingly, the Chamber ordered the Prosecutor to submit, as a confidential *ex parte* Prosecutor document, final proposals for redaction of the Documents Requested by the Defence, for review by the Chamber;
7. **NOTING** the "Proposal for redaction of documents requested by the Defence pursuant to the order of 31 October 2008", and Annexes A and B thereto, filed by the Prosecutor on 7 November 2008 as a "confidential *ex parte* Prosecutor only document"⁸;
8. **NOTING** the Chamber's functions and powers relating to the protection and privacy of victims and witnesses under articles 57(3)(c) and 68 of the Statute of

⁵ ICC-02/04-5-US-Exp.

⁶ ICC-02/04-9-US-Exp.

⁷ ICC-02/04-8-US-Exp.

⁸ ICC-02/02-01/05-336.

the Court (the "Statute"), as well as rule 87 of the Rules of Procedure and Evidence (the "Rules");

9. **NOTING** in particular that, pursuant to article 68(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";
10. **NOTING** that, accordingly, the Chamber has the power to make redactions and limit access to documents filed in the record in order to protect victims and witnesses pursuant to articles 57(3)(c) and 68(1) of the Statute, rule 87 of the Rules and regulation 23 *bis*(3) of the Regulations of the Court;
11. **CONSIDERING** that, in accordance with the criteria followed so far in respect of the unsealing of documents in the record of the Situation and of the Case and in light of the limited scope of the Proceedings, it appears necessary to exclude access by the Defence to any detail or information which could result in the disclosure of the identity or the location of victims and witnesses, as well as to any other detail which, if revealed, could jeopardize their security or the effectiveness of protective strategies or measures taken by the Court or by other entities;
12. **NOTING** that the documents of immediate relevance to the issues at stake in the Proceedings were made available to the Defence as early as 3 November 2008⁹, pursuant to the 31 October 2008 Decision¹⁰;
13. **NOTING** that, in light of the limited scope of the Proceedings, the Chamber has reviewed the redactions to the Documents Requested by the Defence proposed by the Prosecutor;

⁹ "Submission of documents pursuant to order of 31 October 2008" (ICC-02/04-01/05-329).

¹⁰ ICC-02/04-01/05-328.

14. **CONSIDERING** that, following review, the redactions proposed by the Prosecutor appear appropriate in light of the criteria consistently applied by the Chamber in respect of the Situation and of the Case¹¹ as well as of the specific scope of the Proceedings, without prejudice to the Chamber's power to proceed to further determinations as regards the confidentiality level of the relevant documents in due course;
15. **CONSIDERING**, in particular as regards the proposed redactions to the Prosecutor's Amended Application, that the Chamber concurs with the Prosecutor's view that the locations of the incidents mentioned in the warrants of arrest issued in the Case should be made available to the Defence;
16. **CONSIDERING**, however, that in light of the need to adequately ensure the safety and security of victims and witnesses as well as of the limited scope of the Proceedings, it appears appropriate at this stage to adopt a protective approach;
17. **CONSIDERING** that, in particular, it appears appropriate to limit the number of annexes to the Prosecutor's Amended Application made available to the Defence;
18. **NOTING** that the Defence also requested access to the "Prosecutor's Proposed redacted version of amended application for warrants of arrest under article 58", dated 18 May 2005¹²;

¹¹ ICC-02/04-01/05-52; ICC-02/04-01/05-62; ICC-02/04-01/05-78; ICC-02/04-01/05-89; ICC-02/04-01/05-135; ICC-02/04-01/05-268.

¹² ICC-02/04-9-US-Exp

19. **CONSIDERING** that, in light of the order to the Prosecutor to file a redacted version of the Prosecutor's Amended Application as a "confidential, *ex parte* Prosecutor and Defence" document, such request becomes moot;

FOR THESE REASONS, THE CHAMBER HEREBY

DECIDES to re-classify the following documents as "Confidential, *ex parte* Prosecutor and Defence" the following documents:

1. "Submission of Proposed Forms of Warrants of Arrest and Notification of Amendment to Application for Warrants of Arrest Under Article 58" (ICC-02/04-5-US-Exp), dated 13 May 2005;
2. Annexes A, B, C, D, E, F, G, I, I-1 until I-5 inclusive, J, L, M, N, O, P, S, U and X to the "Prosecutor's Amended Application for Warrants of Arrest Under Article 58" (ICC-02/04-8-US-Exp);

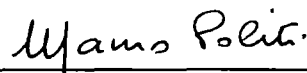
ORDERS the Prosecutor to prepare, on the basis of the proposals set forth in his "Proposal for Redaction of Documents requested by the Defence Pursuant to the Order of 31 October 2008" and/or in the Annexes thereto (ICC-02/04-01/05-336-Conf-Exp) dated 7 November 2008, redacted versions of the following documents:

1. "Prosecutor's Amended Application for Warrants of Arrest Under Article 58" (ICC-02/04-8-US-Exp);
2. Transcripts of the hearing held in closed session on 16 June 2005 (ICC-02/04-T-2-Conf-Exp);
3. Transcripts of the hearing held in closed session on 21 June 2005 (ICC-02/04-T-3-Conf-Exp);

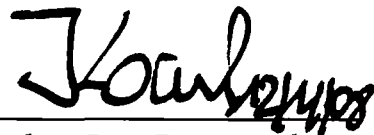
4. Transcripts of the hearing held in closed session on 3 October 2005
(ICC-02/04-01/05-T-1-Conf-Exp);
5. Transcripts of the hearing held in closed session on 6 October 2005
(ICC-02/04-01/05-T-2-Conf-Exp);

and to file them in the record of the Case as documents classified as “confidential, *ex parte* Prosecutor and Defence” no later than Friday, 14 November 2008 at 12h00.

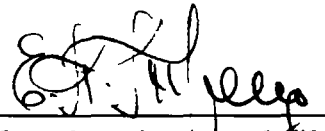
Done in English and French, the English version being authoritative.



Judge Mauro Politi
Presiding Judge



Judge Hans-Peter Kaul



Judge Ekaterina Trendafilova

Dated this Wednesday, 12 November 2008

At The Hague, The Netherlands.