

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 10 March 2009

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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 redacted version

Decision on the "Registry's Report on the mission to Uganda"

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

The Office of the Prosecutor

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

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 2004;¹
2. **NOTING** the warrant of arrest for Joseph KONY, issued by the Chamber on 8 July 2005, as amended on 27 September 2005,² and the warrants of arrest issued for Vincent OTTI,³ Okot ODHIAMBO,⁴ and Dominic ONGWEN⁵ on 8 July 2005 (the “Warrants”), in the case of the *Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen* (the “Case”);
3. **NOTING** the request for arrest and surrender of Joseph KONY, dated 8 July 2005, as amended on 27 September 2005,⁶ and the requests for arrest and surrender of Vincent OTTI,⁷ Okot ODHIAMBO⁸ and Dominic ONGWEN⁹ to the Republic of Uganda, dated 8 July 2005;
4. **NOTING** the “Decision initiating proceedings under article 19, requesting observations and appointing counsel for the Defence” dated 21 October 2008;¹⁰
5. **NOTING** the “Registry’s Report on the mission to Uganda” dated 20 February 2009 (the “Registry’s Report”),¹¹ whereby the Registrar submitted information “on the possible surrender of Okot Odhiambo, and on the modalities

¹ ICC-02/04-1.

² ICC-02/04-01/05-53.

³ ICC-02/04-01/05-54.

⁴ ICC-02/04-01/05-56

⁵ ICC-02/04-01/05-57.

⁶ ICC-02/04-01/05-29-US-Exp, reclassified as public pursuant to Decision ICC-02/04-01/05-135.

⁷ ICC-02/04-01/05-13-US-Exp, reclassified as public pursuant to Decision ICC-02/04-01/05-135.

⁸ ICC-02/04-01/05-15-US-Exp, reclassified as public pursuant to Decision ICC-02/04-01/05-135.

⁹ ICC-02/04-01/05-16-US-Exp, reclassified as public pursuant to Decision ICC-02/04-01/05-135.

¹⁰ ICC-02/04-01/05-320.

¹¹ ICC-02/04-01/05-370-Conf-Exp.

currently in place in Uganda for arrest and surrender of persons against whom an ICC arrest warrant has been issued” following a mission to Uganda during which representatives from the Registry met with members of the ICC-Uganda Task Force, officials from the embassies of a number of countries, [REDACTED]

, and with the Chief of Party of the pro bono law firm Public International Law and Policy Group (“PILPG”);

6. **NOTING** further that, on the basis of the information submitted, the Registry suggested to the Chamber (i) to grant PILPG the status of *amicus curiae* providing views “on the capacity of the Special Division of the High Court to try war crimes in Uganda” and (ii) to seek the views of the Government of Uganda on what modalities they intended to use in order to execute the arrest and surrender of the persons sought by the Court in the Case;

7. **NOTING** article 19 of the Statute of the Court (the “Statute”), regulation 23 *bis* and regulation 24bis of the Regulations of the Court (the “Regulations”);

8. **NOTING** that a significant portion of the Registry’s Report addressed issues pertaining to the interpretation and application of the statutory provisions relevant within the context of the Proceedings, namely those governing the principle of complementarity and the admissibility of a case before the Court;

9. **CONSIDERING** that such issues, far from pertaining to the Registry’s functions as enshrined in the statutory instruments of the Court, fall within the scope of the exclusive competences and responsibilities of the Chamber;

10. **NOTING** that other sections of the Registry’s Report address issues relating to the prospects for arrest and surrender of the persons sought by the Court in the Case;

11. **CONSIDERING** that the statutory instruments of the Court vest the Registry with responsibilities as to the arrest and surrender of the persons sought by the Court and that, accordingly, the sections of the Registry's Report addressing issues of arrest and surrender are related to the proper discharge of the Registrar's functions within the meaning of regulation 24*bis*(1) of the Regulations;

12. **CONSIDERING**, however, that regulation 24*bis*(1) of the Regulations requires that the submissions by the Registrar, whether oral or written, be made "with notification to the participants" and that regulation 24*bis*(2) only allows for a document to be filed "*ex parte* Registrar only" "if knowledge by the participants of the content of the document filed would defeat its purpose";

13. **CONSIDERING** that regulation 23*bis*(1) of the Regulations provides that "any document filed by the Registrar or a participant and marked '*ex parte*, 'under seal' or 'confidential' shall state the factual and legal basis for the chosen classification";

14. **CONSIDERING** that the Registry's Report was filed as "*confidential, ex parte* Registry", without however providing any factual or legal justification supporting the chosen classification;

15. **CONSIDERING** that most, if not all, of the information contained in the Registry's Report appears to be already either in the record of the Case or in the public domain or and that, accordingly, the Chamber can hardly see how access to the Registry's Report by the other participants would "defeat its purpose";

16. **CONSIDERING** that, pursuant to regulation 24*bis*(2) of the Regulations, even in the event that it would be determined that knowledge of its content by the other participants would defeat the purpose of the Registrar's submission, the Chamber

still has to decide “whether notice of the existence of the filing is to be provided to the participants”;

17. **CONSIDERING** that, to date, the Chamber is not in a position to take the decision required under regulation 24*bis*(2) of the Regulations;

FOR THESE REASONS, HEREBY

REQUEST the Registrar to provide reasons justifying her choice to file the Report as “Confidential Ex parte Registrar” no later than 17 March 2009.

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

[signed]

Judge Mauro Politi
Presiding Judge

[signed]

Judge Hans-Peter Kaul

[signed]

Judge Ekaterina Trendakova

Dated this Tuesday, 10 March 2009

At The Hague, The Netherlands