

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

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

Date: 22 September
2005

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PRE-TRIAL CHAMBER II

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

Registrar: Mr Bruno Cathala

SITUATION IN UGANDA

**Under seal
Ex Parte, Prosecutor Only**

**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	

In response to the Order of Pre-Trial Chamber II, dated 21 September 2005, the Prosecutor respectfully submits additional information relating to the Prosecutor's Application For Unsealing of Warrants of Arrest Issued on 8 July 2005, and Other Related Relief. For the reasons stated below, the Prosecutor respectfully requests that this additional information be considered in further support of its request that the currently sealed warrants of arrest be unsealed, in amended and redacted form, on 28 September 2005.

Request for Sealing of This Submission

1. Because this submission is related to the currently sealed warrants of arrest, and responds to a series of questions from the Chamber relating to victim- and witness-protection matters, the OTP requests that this submission be received under seal, and *ex parte*, and that only the existence and title of this submission be unsealed, even after the unsealing of any warrants of arrest.

Request for Extension of Page Limit

2. The Prosecution respectfully requests that the page limit set forth in Regulation 37 be extended. The reasons for this request are that: (1) this submission reprints, for ease of reading, the questions of the Chamber; and (2) in light of the clear gravity of the questions, the OTP has tended to provide full answers to the questions posed. The Prosecution makes this request together with the submission itself only because it has not had an opportunity to seek a page-extension in advance of preparing this submission.

Responses to Questions Posed in the Order of Pre-Trial Chamber II Dated 21 September 2005

3. The OTP respectfully submits the following answers to the questions posed in the Order of Pre-Trial Chamber II dated 21 September 2005. For the convenience of the Chamber, each question specified in the Order is stated together with the answer of the OTP.
4. **Chamber Request 1:** *The Chamber "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."*
5. **Answer to Chamber Request 1.** The OTP continues to expect that, on or before 28 September 2005, they will complete implementing the overall plan for the security of witnesses and victims of the situation in Uganda, including measures to ensure the safety or physical or psychological well-being of victims, potential witnesses and their families and, in particular, those persons mentioned in the Prosecutor's application for warrants of arrest.¹

¹ The OTP uses the term "overall security plan" to describe the planning which encompasses all security planning reported by the OTP at the hearings on 16 June 2005 and 21 June 2005 hearings, and undertaken in advance of unsealing. See, e.g., 16 June 2005 Tr., pages 69, 70. There is, however, a distinction important to the VWU. In its view, the "overall security plan" is already in place and the only steps

The protective measures taken to date have already been described, in broad terms, in paragraphs 9 and 10 of the Application for Unsealing of Warrants of Arrest Issued on 8 July 2005, and other Related Relief, dated 09 September 2005 (hereinafter "Unsealing Application"). These descriptions are supplemented below, in response to Question 1. The answers below, together with paragraphs 9 and 10 of the Unsealing Application, describe "all measures" taken or set in place to date to ensure the safety and well-being of victims, potential witnesses, and their families. The only measures remaining to be completed under the overall plan are the [REDACTED]

6. **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*

remaining to be completed are [REDACTED]

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)?

7. **Answer to Question 1.** The position of the OTP, at the time it originally sought the issuance of warrants of arrest, on 6 May 2005, was that any warrants of arrest issued by the Chamber should not be unsealed "until either the security conditions in potentially affected areas improve or further protection measures can be arranged." See Prosecutor's Application for Warrants of Arrest Under Article 58, para. 12. The OTP recently requested that the Chamber unseal the warrants of arrest previously issued on 8 July 2005, based on the following circumstances: (1) that in the last four months, the security conditions in areas inhabited by victims and potential witnesses and their families have improved, and (2) that in the same period, through joint efforts of the OTP and the VWU, protection measures have been arranged and implemented.
8. The victim- and witness-protection measures which have been implemented in the last months fully anticipate public knowledge of the warrants of arrest. The overall security plan assumed public knowledge of the warrants of arrest in light of the significant and uncontrollable risk that warrants of arrest would become public, through no fault of the state receiving the warrants, even assuming a sealed transmission.² Because of the assumption of public

² The concern about the inability of the ICC to control potential leaks of information was heightened soon after the submission of the application for the issuance of warrants of arrest when, on 12 June 2005, the newspaper *Le Monde* published an article in which it reported that judicial sources had disclosed that the Prosecutor had sought two warrants of arrest. Since that time, articles have occasionally appeared in Uganda and elsewhere speculating that warrants of arrest have been sought by the Prosecutor.

knowledge, when the OTP and the VWU complete implementation of the overall security plan, and warrants are unsealed, the measures deemed necessary as part of the coordinated VWU/OTP effort will already have been put in place. The complete and one-time disclosure of the warrants of arrest, on a date planned in advance, will enable the Court to publicise the warrants at a moment when the necessary and appropriate security arrangements have been fully implemented in advance.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9. With respect to the portion of Question 1 asking about the consequences of unsealing for the “overall safety of the civilian population” in Uganda, the OTP first notes that neither the OTP nor the Chamber has the statutory responsibility, nor the practical possibility, of ensuring the overall safety of a civilian population, particularly in the context of a civil war. Nonetheless, such concerns were borne in mind at all times, and the proposal to unseal the warrants of arrest before the end of this month fully incorporates the objective of unsealing the warrants at a time least likely to jeopardize the well-being of the civilian population in Uganda. As noted above, a planned and controlled public disclosure enables maximization of security measures, and hence should be done at the earliest moment that such measures are in place. *See additionally infra*, paras. 18-20 (discussing urgency of the date of 28 September 2005). Moreover, the date of 28 September 2005 was proposed in part because the level of violence instigated by the LRA in Northern Uganda is currently at the lowest it has been in years. The month of August 2005

indeed saw even lower levels of LRA activity in Northern Uganda than other months of the summer of 2005, during which LRA activity had already fallen from previous periods.

10. In addition, the OTP has ensured that the UPDF, which bears the primary and ongoing responsibility for the security of the population of Northern Uganda, understands the heightened responsibility that it will bear with respect to the civilian population when warrants of arrest are unsealed. Representatives of the OTP and the VWU have attended meetings with the UPDF and the Defence Minister of Uganda, during which representatives of the Government of Uganda, including the Defence Minister, have indicated that necessary and appropriate measures at the IDP camps identified in the warrants of arrest will be taken in advance of the date of 28 September 2005.³
11. Finally, in the past few days, the OTP has received additional information that suggests that the unsealing of the warrants should be accomplished immediately as a means of fulfilling the objective of protecting the civilian population of Northern Uganda. It has been reported in the media, and confirmed to the OTP by the Ugandan Government, that Vincent OTTI and Buk Abudema have moved into the Democratic Republic of Congo ("DRC"), with other commanders and fighters. There are also reports, as yet unconfirmed, that Joseph KONY and Okot ODHIAMBO are both moving westward in the direction of the DRC. This movement of the LRA leadership is unprecedented in the history of the armed conflict. There is no information to indicate that the LRA leadership has ever moved west of the River Nile

³ Without telling representatives of the Government of Uganda about the existence of the warrants, the OTP has requested measures to be implemented on or before 28 September 2005.

and no information to indicate that the LRA has ever taken refuge in the DRC.

12. Given these circumstances, unsealing the warrants as soon as possible after the overall security plan is fully implemented could present a unique opportunity to enhance the security of victims and witnesses in Northern Uganda, by making possible the arrests of the leadership of LRA while they are in the DRC, a State-Party, and apart from their operational forces in Northern Uganda. Since the recent movement of the LRA commanders into the DRC the OTP has had engagement with relevant international organizations on the issue of arrest and surrender. Delay, however, could alter the situation dramatically. If the LRA leadership returns from their latest movements back to Northern Uganda, and re-supplied with new weapons or funds, the current security situation in Northern Uganda could deteriorate.

13. The precise measures taken to respond to the concerns that motivated the sealing of the warrants and related documents [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- On the part of the OTP, the minimizing of contact with, and the use of, victim-witnesses, by reliance on other forms of evidence, where such evidence is available;



4 

~~Pursuant to Decision ICC-02/04-01/05-424, dated 06-02-2015, this document is copied and transferred in the case ICC-02/04-01/15: The Prosecutor vs. Dominic Ongwen~~

~~ICC-02/04-01/15-16-Conf-Exp-26-05-2015-10/28-EK-PT~~

~~Pursuant to Pre Trial Chamber II's Order ICC 02/04 01/15 238, dated 22nd May 2015, this document is reclassified as "Confidential, Ex Parte, only available to the Prosecutor"~~

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14. The statement in the Unsealing Application 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" is based on information collected from [REDACTED]
- All of the available information, [REDACTED]
[REDACTED], establishes the following: (a) the number of killings and abductions in Northern Uganda, in the period from late 2004 to the present is less than half the levels experienced between March 2002 and March 2004; (b) the LRA has only rarely carried out attacks of the scale or severity of those which form the basis of the arrest warrant application since the summer of 2004; (c) attacks successfully mounted upon a symbolic target of retaliation have also been rare in the same period, although in an important exception, on 21 February 2005, at Alokolum IDP Camp, in Gulu district, [REDACTED]
[REDACTED]
- [REDACTED] (d) LRA attacks during this summer in Northern Uganda have routinely been on a smaller scale, and have occurred mostly in Pader and Kitgum districts, and to a lesser degree in Gulu district. These attacks have been made outside camps, where security is weaker, and usually are directed at civilians who are farming in fields or vehicles on roads; (e) LRA activities in Lira and Soroti districts have been very infrequent (with the exception of northern Lira); (f) Gulu town is now relatively safe.

15. The OTP also has received UPDF assessments, again corroborated by other sources, that the LRA consists at present of only approximately 400 fighters and is operating in small and scattered groups, in Northern Uganda, the DRC, and the Sudan. The UPDF has assessed, and others concur, that the LRA appears to be in a defensive posture, in that attacks over the last several months have been carried out with the objectives of obtaining food, weapons, and money. Numbers of abductions and killings are decreased from prior levels.
16. A final factor bearing upon the OTP's statement about the LRA's capability to carry out large-scale attacks and attacks against symbolic targets is the improved effectiveness of military defences at the IDP camps in the north. This improvement, and the relationship between this improvement on the part of the military and the decrease in violence in Northern Uganda, has been reported to the OTP by camp residents and officials as well as staff of organizations who work in or travel to IDP camps. Measures taken by the UPDF to improve camp security since the LRA perpetrated the attacks described in the warrant application include improved deployment of mobile forces to areas needing protection or reinforcement, and more effective positioning of soldiers within and around a given IDP camp.
17. **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?*

18. **Answer to Question 2.** Preparing the security measures, as previously discussed with the Chamber, is a complex undertaking requiring coordination with many partners. Such coordination requires that partners work toward a common date to prepare and maximize the effectiveness of security measures. Enormous efforts have been made to prepare, both internally and externally, for the unsealing of the warrants on 28 September 2005, based on the rationale that unsealing should be accomplished as soon as victim and witness protection measures are in place. These efforts have included but are not limited to: (1) coordination with Uganda officials of various ministries (Defence, Justice, Interior) to prepare security which must be in place, and must be maintained, once the arrest warrants become public, and arrest strategies which become possible upon publicizing the warrants of arrest; (2) coordination internally with the VWU regarding the implementation of security measures and enhanced monitoring of security factors which will be appropriate at and immediately after the time the warrants are publicised; (3) coordination with Registry regarding outreach and dissemination of information which must occur simultaneously with the publicizing of warrants of arrest, to maximize the effectiveness of protective measures and to ensure the dissemination of accurate information regarding the Court's activities. Most fundamentally, at the time the warrants are publicised, important steps will be required on the part of the Registry, the OTP, and external cooperation partners, including but not limited to the Government of Uganda, to enhance security, in the critical time just following issuance of the warrants. Some of these same actors will be working to maximize the prospects for arrests.

19. It is not possible for all of the actors who will be involved in the planning thus far to remain in a constant state of readiness after the 28 September 2005, if this Court is unable to render a decision before that date. Re-setting the date of 28 September 2005 therefore will introduce a significant disruption to the planning process. For these reasons, the OTP views the 28 September 2005 date to be vital and continues to request the Chamber to issue a decision before that date.

20. In addition, the security situation is as favourable as has existed in Northern Uganda in the entire time the investigation has been underway, but it is also extremely dynamic. These factors militate in favour of unsealing of the warrants as soon as the VWU and the OTP complete implementation of victim- and witness-protection measures. The current and unprecedented movement of the LRA leadership into the DRC underscores that the security situation changes on a nearly daily basis. If, for example, the LRA returns from the DRC with better weaponry or more funds, the LRA could pose a greater threat to the security of Northern Uganda than it has in the past. It is also unknown what activities the LRA may be planning in this first-time foray into the DRC, a movement which may also threaten security in that region. Given these circumstances, each day that passes could present a missed or even unique opportunity either to unseal the warrants in a relatively favourable security environment or to effectuate arrests. Each day that passes, however, simultaneously presents the possibility that a currently favourable security environment will deteriorate to the detriment of the well-being of victims and witnesses.

21. **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?*
22. **Answer to Question 3.** The individuals identified in the warrants have remained at large for significant periods of the nineteen year conflict, often residing outside the territory of Uganda. Unsealing and publicizing warrants of arrest identifying the named individuals as potential perpetrators of war crimes and crime against humanity will undoubtedly highlight the criminal activities of these individuals and focus regional and international attention on their arrest. For example, if the Ugandan authorities were to seek assistance in relation to arrest, unsealing would facilitate that process. Certainly the publication of warrants is a mechanism which historically has contributed to the reduction of support to identified individuals and their apprehension by international criminal tribunals.
23. The transmission of sealed warrants of arrest – an option which was favoured by the OTP in the circumstances prevailing at the time it submitted the application for the issuance of arrest warrants – has become less desirable since that time. During the period of sealing, the OTP was endeavouring: (1) to garner support for arrest efforts, to the greatest extent possible without disclosing the existence of the warrants; and (2) to implement, in consultation with the VWU, victim- and witness- protection measures, sufficient to

support unsealing of the warrants.⁶ Both of these efforts have been completed. In addition, through consultations which have carried on until the present, it has become apparent the base of regional and international attention and support which may be necessary to enhance ongoing – but as yet wholly unsuccessful – efforts to apprehend the leadership of the LRA cannot be further developed without making known the existence of arrest warrants and the content of those warrants. In this circumstance, transmitting sealed warrants will hinder the execution of warrants, because limiting knowledge of the warrants to certain countries will necessarily limit possible sources of support and also reinforcement of support.

24. Arrest efforts will also be enhanced by unsealing of the warrants of arrest because unsealing will provide clarity that only the top leadership of the LRA are named in the arrest warrants. Only by specifying, in the public eye, the individuals named in the warrants of arrest can efforts be initiated to further isolate the top command and encourage lower level LRA commanders to defect.
25. Finally, the arrangements set forth for the protection of victims and witnesses in the warrants of arrest, in the view of the OTP or the VWU, were not sufficient that exclusive reliance on those arrangements was deemed prudent. As is discussed above, the overall security plan assumed public knowledge of the warrants in part because of a lack of confidence that the safety and well-

⁶ Since the hearing on 16 June 2005, the OTP has consistently taken the position that unsealing should follow once: (1) it had exhausted efforts to garner support for the arrest warrants which were possible without revealing the existence of warrants; and (2) protection measures being implemented with the VWU were complete. *See* 16 June 2005 Tr. 69 (securing of those at risk should precede warrants becoming known to public), 70 (disclosure of the warrants should follow work on security and support for the warrant), 74 (incremental disclosure to cooperation partners less desirable than making warrant public, once opportunities to garner support without disclosing existence of warrants are exhausted).

being of victims, potential witnesses, and their families could effectively be maintained if warrants of arrest were transmitted, even on a sealed basis and despite the best efforts of any receiving States.⁷ Since the warrant application was submitted, there have been “leaks” about the existence of the warrants and their contents, both in the international and the local media. There is also intense curiosity in Uganda about the existence and timing of arrest warrants. Piecemeal transmissions or disclosures about the warrants from the Court will indeed disadvantage protection efforts to the extent that they lead others to disseminate “leaks,” speculation, or mis-information which come as surprises to the OTP and/or the VWU. It is in part because the OTP preferred perfect and public clarity, in a controlled moment, that it determined to seek unsealing of the warrants, at one time and in a slightly redacted form. The VWU, upon being advised of this reasoning, among other facts, concurred in this view.

26. **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?*
27. **Answer to Question 4.** *See answer to Question 3. In addition, it is through the publicizing of warrants of arrest that: (1) the broadest base of possible*

⁷ At present, three countries are in a position to arrest the individuals named in the warrants of arrest (the Government of Uganda, the Government of Sudan, and the Government of the DRC), and accordingly transmission to each of these states is foreseeable.

support for arrest efforts can be sought; (2) the regional and international impact of the existence of warrants of arrest can be maximized; and (3) the named individuals can be identified to those who might otherwise support or harbour them. As has been communicated to the Chamber, the OTP has, through past efforts, engaged in extensive consultations aimed at securing support for arrest efforts, if and when arrest warrants are issued by the Court. However, these consultations can only advance once there is knowledge that warrants have in fact been issued. Once protective measures are in place, there is no rationale for the continued sealing of the warrants of arrest. The history of the civil conflict suggests strongly that focused regional and international support would enhance the ongoing efforts at apprehension.

28. **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?*
29. **Answer to Question 5.** The protective measures described in this submission, *see, e.g.,* para. 13, are the measures that have been implemented

to ensure that unsealing the warrants of arrest does not undermine the ongoing investigation. The OTP and the VWU have directly addressed vulnerabilities of victims, potential witnesses, and their families, through implementation of the overall security plan.

30. At the time the application was drafted, the OTP had a logical preference for executing the warrants, if possible, before unsealing them, because arresting the individuals named in the warrants obviously would have been a powerful protection measure. The application also made clear, however, that the OTP believed that sealing might become unnecessary once the security situation improved or further protective measures were arranged. *See* Amended Warrant Application, para. 12. In any event, the OTP has addressed the concern about continued cooperation directly, by addressing victim- and witness-protection needs through implementation of the overall security plan. The OTP believes that it is no longer the case that the unsealing of the warrants of arrest will impair cooperation. It indeed has discussed the possibility of arrest warrants becoming public (in hypothetical terms) with victims, witnesses and information providers and there is no indication that these sources will withdraw support for the investigation if warrants become public. Some indeed are asking when, if ever, there will be visible progress in the case, a circumstance which likely has been aggravated by the media reports in Uganda that the issuance of warrants of arrest is either imminent or already has been accomplished.

31. It is important to note that continued lack of clarity about the persons named in the warrants also threatens to impair cooperation from potential witnesses and information providers. [REDACTED]



 By making clear the identities of the named persons, the unsealing of the warrants will reassure potential witnesses who may have fears that they themselves will be prosecuted, or civilians or victims who are in a position to cooperate but have fears on behalf of former LRA members.

32. The OTP has also reached the point at which the planning of arrest efforts is impaired by an inability openly to discuss the existence of arrest warrants with our partners. The potential arresting states now include Uganda, Sudan and the DRC, and as discussed above, the regional and international actors who may be in a position either to support or aid arrest efforts, or to attempt to impair them, are numerous and unpredictable. Again, in the OTP's view, the overall effort of executing arrests at this point will be aided by absolute clarity to all of these actors or potential actors, about the named persons, the charges they may face, and the scope of the investigation. From a security standpoint, too, the view is that publicising the warrants of arrest is preferable. *See* Para. 25, *supra*. Through publication of the warrants of arrest the OTP and the VWU can plan around a controlled, one-time, and complete disclosure rather than the uncontrolled time-to-time leakages and/or disclosures of information which would likely follow transmission on a sealed basis, even assuming the best efforts of the receiving states to maintain confidentiality.

33. The OTP is confident that publicizing the warrants will not impair future arrest efforts. To the contrary, successful arrest is likely to be dependent on international attention and public warrants will galvanize support for arrest efforts. For all of these reasons, we believe that unsealing the warrants of arrest is the safer and better option.
34. **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?*
35. **Answer to Question 6.** The OTP is requesting that the warrants and their content be treated as public without further requirements for confidentiality other than the redactions and amendments specified in the Unsealing Application. As explained above, publication will be valuable in order to galvanize international attention and support for the execution of the arrest warrants.
36. The modalities for publication would be developed and implemented through inter-organ consultation and coordination. The inter-organ External Communications Group has had preliminary discussions on hypothetical scenarios such as announcement of the first arrest warrants issued by the

Court. The OTP position, which is shared by the External Communications Group, is that public information activities in such an eventuality should be commensurate with the significance of this step in the history of the ICC and should help galvanize international support for arrests. Appropriate activities would include a press release and dissemination of general information in Uganda and from The Hague by the Registry, as well as a press conference by OTP to answer questions relevant to OTP. The role of the Chamber would be determined by the Chamber. Planning of OTP and Registry would be adjusted to reflect any input from the Chamber.

37. **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?*
38. **Answer to Question 7.** With respect to the requests to amend the warrant of arrest and request for arrest and surrender naming Joseph KONY, insofar as KONY's birthplace has been mis-stated, the legal bases for the Chamber's authority to correct the error (upon request or on its own volition) are found: (a) in the general authority with which the Chamber is vested to issue orders and warrants under Article 57;⁸ and (2) in the Chamber's inherent authority

⁸ See ICTY, Trial Chamber II, *Prosecutor v. Seselj*, Corrigendum to Decision on the Accused's Motion to Re-Examine the Decision to Assign Standby Counsel, 11 March 2005, invoking Rule 54 of the ICTY RPE as a basis for the issuance of the Corrigendum. Rule 54 of the ICTY RPE, similar in wording to Article 57 of the Rome Statute, provides that "at the request of either party or *proprio motu*, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation and conduct of the trial."

to ensure fair and efficient judicial proceedings⁹, which necessarily includes the ability to correct a decision which contains erroneous information or statements. In this case, the fault for the underlying error lies with the OTP, and not the Chamber.

39. The request to amend can also be viewed as a request for the Chamber to issue what in the practice of the existing international criminal tribunals is generally referred to as a “corrigendum,” a procedural device aimed at correcting both clerical and material errors contained in warrants, orders or decisions made by a Chamber, either upon request of a party or *proprio motu*.¹⁰
40. The request to substitute specific language used by the Chamber in the warrants of KONY, OTTI and ODHIAMBO, made at paragraph 14 of the Unsealing Application, was a request for protective measures aimed at

⁹ *Prosecutor v. Milosevic*, Order on Renewed Application by the Accused to Add Four Witnesses to his Witness List, 16 February 2005 - “notes the inherent power of the Trial Chamber to make a further order to regulate procedure at any stage”; *Prosecutor v. Delalic*, Order on Esad Landzo’s Motion for Expedited Consideration, 15 September 1999 - “CONSIDERING the inherent power of the Appeals Chamber, deriving from its judicial function and from the provisions of Articles 20 and 21 of its Statute, to control its proceedings in such a way as to ensure that justice is done and, particularly in relation to matters of practice, that the proceedings are fair and expeditious”; *Prosecutor v. Simic*, Separate Opinion of Judge David Hunt on Prosecutor’s Motion for a Ruling Concerning the Testimony of a Witness (TC), 27 July 1999 at para. 25 - “It is the fundamental obligation of this Tribunal, imposed by Articles 20 and 21 of its Statute, to ensure the fair and expeditious trial of those indicted before it. [...] The Tribunal also has an inherent power, deriving from its judicial function, to control its proceedings in such a way as to ensure that justice is done.”

¹⁰ The jurisprudence of the ad hoc Tribunals and of the Special Court for Sierra Leone (SCSL) provides numerous examples of this practice. See, *inter alia*, SCSL, Trial Chamber, *Prosecutor v. Brima et al*, Consequential Order and Corrigendum to the Decision on Prosecution Request for Leave to Amend the Indictment, 12 May 2004 (correcting its previous order pursuant to a corrigendum filed by the Prosecution); ICTR, Trial Chamber I, *Prosecutor v. Simba*, Corrigendum to Decision on Release of Aloys Simba Pursuant to Rules 40bis (H) and 40bis (K), 27 January 2004 (replacing “government of Cameroon” in paragraph 8 of the original Decision for “Government of Senegal”); ICTY, Trial Chamber, *Prosecutor v. Meakic et al*, Corrigendum to Decision on Momcilo Gruban’s Preliminary Motion on the Form of the Indictment, 28 April 2003 (correcting the location where the accused allegedly performed his functions as shift commander and the reference to the alleged acts attributed to him in the indictment and its attached schedules).

protecting the safety and well-being of a victim/witness. As such, it is governed by Articles 68 (1) and 57 (3) (c) of the Statute, as well as Rule 87 of the Rules of Procedure and Evidence. The OTP requested substitution instead of redaction of the language in question in an effort to maintain to the greatest extent possible the meaning of the warrants originally issued by the Chamber. The language proposed would provide information about the victim's age sufficient to make clear why a child conscription count was included in the warrants, but without disclosing the precise age which could lead to the victim being identified. The OTP considers that if a Chamber may, *inter alia*, entirely expunge from the public record the name of the victim or witness, or any information which could lead to his or her identification, pursuant to Rule 87 (3) (a), the Chamber perforce possesses the authority to substitute, for reasons of victim- or witness- protection, certain language in its order or warrant for other less specific language which remains true.

41. In any event, if the Chamber considers that substitution is not an appropriate measure under the cited relevant provisions, the OTP has no objection to a determination by the Chamber that redaction alone is merited. By the proposed substitutions the OTP was merely attempting to retain the internal logic of the original warrants.

* * *

42. Finally, with respect to the last subsection of the question posed by the Chamber to the VWU, the OTP can offer information derived purely from the investigation which may bear on the Chamber's consideration. As a factual matter, at this time, there is no information suggesting that there is any meaningful prospect of recovering, or even tracing, proceeds, instrumentalities, or assets of any significant value. In addition, to the extent

that any sums of significance exist, they are likely located in the Sudan, rather than in Uganda, making Article 93(1)(k) inapplicable.

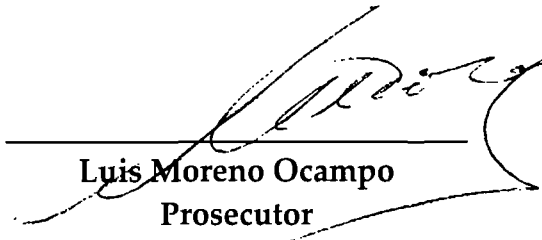
CONCLUSION

The foregoing answers demonstrate the following about the warrants of arrest issued by this Chamber over two months ago: (1) the pre-conditions for unsealing will have been fully satisfied on or before 28 September 2005, in that all victim- and witness-protection measures deemed necessary and appropriate will have been implemented by the VWU and the OTP; (2) the dissemination of unsealed warrants will be more effective in securing arrests than sealed transmission to states, mainly because of the possibility of garnering regional and international attention and support for effective apprehension of the LRA leadership; (3) the careful and extensive planning and coordination which has been undertaken in anticipation of the unsealing of the warrants of arrest,

will be disrupted if the warrants of arrest are not unsealed on 28 September 2005; and (4) unique opportunities for arrest and protection which are presented by the presence of LRA leadership in the DRC may be lost if the current planning is not maintained.

For these reasons and the others stated above, the OTP respectfully: (1) requests that the Chamber deem this submission, and the submission of the VWU, a substitute for the hearing requested by the OTP in the Unsealing Application; (2) renews its request that the warrants of arrest naming Joseph KONY, Vincent OTTI, Raska LUKWIYA, Okot ODHIAMBO, and Dominic ONGWEN be

unsealed, in certain cases in redacted and amended form, on 28 September 2005;
and (3) renews its request that the OTP be permitted to give advance notification
of the issuance of warrants of arrest to UNDSS.



Luis Moreno Ocampo
Prosecutor

Dated this 22nd day of September, 2005

At The Hague, The Netherlands