Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

International Criminal Court.
Pre-Trial Chamber II Situation in Uganda, Case Number 1 ICC-02/04-01/05.
Status Conference. Monday 3rd October 2005 -- Closed session.
Decision ICC-02/04-01/05-328 reclassifies this transcript as “confidential ex parte” OTP and Registry only. The hearing starts at 3.10 pm.

THE USHER: All rise. The International Criminal Court is now in session. Please be seated.

MR THE PRESIDING JUDGE SLADE: Madam Registrar, please call the matter the subject of these proceedings.

THE REGISTRAR: Your Honour, this is situation in Uganda Case No.1, No. ICC 02/04-01/05.

MR THE PRESIDING JUDGE SLADE: Thank you. Madam Prosecutor, kindly announce yourself and your colleagues for the record.

MS BENSOUDA: Thank you, Mr President, your Honours.

Fatou Bensouda, Deputy Prosecutor, appearing together with Christine Chung, Senior Trial Lawyer; Eric MacDonald, Trial Lawyer; Ibrahim Yillah, Associate Trial Lawyer; Matthew Brubacher, Associate Analyst, Jurisdiction, Complementarity and Co-operation Division, Martin Witteveen, Team Leader of the JCCD; and Cristina Ribeiro, Investigator in the JCCD.

MR THE PRESIDING JUDGE SLADE: Mr Registrar, would you do likewise and kindly announce yourself and your colleagues for the record.

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

MR DUBUISSON: Certainly, Mr President, judges. I am accompanied for this session by (Redacted) also the Protection Officer from the Victims and Witnesses Unit; and there is (Redacted) who is the assistant legal officer; and myself, Marc Dubuisson. I am the Head of the Division of Court Services representing the Registrar for this session. Thank you.

MR THE PRESIDING JUDGE SLADE: Thank you very much. This is a status conference by way of closed session of the Pre-Trial Chamber II, called for by the Chamber under its Decision dated 27th September 2005.

As asked for in the Decision, we acknowledge the attendance of members of the Office of the Prosecutor, the representatives of the Registrar of the Court and of the Victims and Witnesses Unit.

The Chamber has found it necessary to hold this status conference because of the importance and the seriousness of the issues involved, and the implications associated with those issues.

The issues were first canvassed in the original application by the Prosecutor, dated 6th May 2005; and, as requested in that application, the decisions of the Chamber and all other documents issued and related to the proceedings have thereafter been placed under seal. Issues for the security and protection of victims and

witnesses which underlie the need for sealing have since become the focus of attention, in particular in the Prosecutor's application for unsealing dated 9th September 2005, and the Prosecutor's urgent application for authorisation to disclose information dated 26th September.

The Prosecutor's applications in turn have of course been the subject of the Chamber's Order for the Provision of Additional Information made on the 21st day of September 2005, and of the Chamber's decision last week, on the 27th, on the Prosecutor's urgent application.

This status conference is limited and specific of purpose. As set out in the Decision of last week, the Chamber seeks firstly from the Office of the Prosecutor, as well from the Victims and Witnesses Unit, a report on the status of protective measures for victims and witnesses; secondly, from the Registrar in particular, information on the transmission of the requests for arrest and surrender; thirdly, from the Office of the Prosecutor, in particular, information on the executions of the warrants of arrest, whether in the territory of the Republic of Uganda or the Democratic Republic of the Congo, and/or the Republic of Sudan; fourthly, from the Office of the Prosecutor in particular, additional

information and clarification regarding the Prosecutor's application for unsealing, and the proposed redactions.

Madam Prosecutor, Mr Registrar, as we have done in the past, we propose that the judges pose a range of specific questions to which we invite your responses. We think it will be convenient if, to each specific question, the Prosecutor may wish to respond first, followed, as may be relevant, by the Registrar and/or the Victims and Witnesses Unit. I will commence such questions, and in time will invite their Honours to ask additional and supplemental questions.

As I turn to the questions, I seek the co-operation of all speakers in these proceedings on the matter of delivery speed. We need to ensure a reasonable rate of delivery to allow for the transcript to capture completely and accurately what is said in this courtroom.

I want now to pose the following question to the Office of the Prosecutor, and to the Victims and Witnesses Unit, namely: what is the current status of implementation and completion of the overall security plan for the protection of witnesses and victims? There is a related question which might as well be dealt with at the same time, namely: we noted in paragraph 5 of the Prosecutor's Provision of Additional Information that

the only measures remaining to be completed under the overall plan are the preventive relocation of certain victims and witnesses. I think there are (Redacted) persons involved.

The question is: have these measures now been implemented? So this is the first question, Madam Prosecutor. May I invite you to respond.

MS BENSOUDA: Mr President, your Honours, for the purposes of this afternoon's proceedings, Miss Christine Chung will be taking questions from the bench and where necessary will be assisted by Eric MacDonald, the Trial Lawyer.

MR THE PRESIDING JUDGE SLADE: Miss Chung.

MS CHUNG: Mr President, I am pleased to report on behalf of the Office of the Prosecutor that after consultations with the Victims and Witnesses Unit, we have completed the steps of the overall security plan, and in particular that the (Redacted) that were contemplated and about which we had written to the Chamber in the past have been accomplished.

There were, I believe, (Redacted) witnesses referred to in our Provision of Additional Information to the Chamber. (Redacted).

(Redacted)

(Redacted)

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

(Redacted)
(Redacted)
(Redacted)
(Redacted)
(Redacted)
(Redacted)
(Redacted). So we continue to monitor
that situation.
The other (Redacted) witnesses: (Redacted)
(Redacted)
(Redacted)
(Redacted)
(Redacted). Of all the victim witnesses who
might come into attention because of the release of the
warrants, or following the release of the warrants, (Redacted)
(Redacted)
(Redacted)
(Redacted)
(Redacted)
(Redacted)
(Redacted)
(Redacted)
(Redacted)
(Redacted)
(Redacted)

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

(Redacted)
(Redacted)
(Redacted)
(Redacted)
(Redacted)
(Redacted)

Obviously what I say today will be in the nature of a supplementation, because some of the measures have been described to the Court before. But I am pleased to describe the progress that has been made in the months since we last convened. For the past four months, as the Chamber is aware, essentially all of the efforts of the OTP in the field, and additionally of VWU on this case, on this situation, have been entirely devoted to witness protection and victim protection measures. So investigative measures have essentially been stopped while we work exclusively on the issue of victim and witness protection.

To quantify this a little bit for the Court, there have been 150 days approximately since we submitted the arrest warrant application. 80 of those days have been spent with a team -- at least one team on the ground in Uganda from the OTP; often -- usually joined by members of VWU. Each team consists of two people, so that effectively means that there have been 160 person days

spent solely on this issue.

Our approach has been, in consultation with VWU, to assume public knowledge of the warrants around the planning. And we did that for several reasons. One is that we felt that, even back in June, when leaks began, we felt that we could not control the information that might become available, or might become leaked about the investigation, and therefore that it was the best cautionary measure to assume public knowledge of the warrants.

In addition, we knew that we could not control speculation about the scope of the investigation, and that if the LRA or other parties wanted to know what we had done investigatively, or investigative focus, that could be determined if someone made enough of an effort. So again that pointed toward assuming there would be public knowledge of the warrants one day, and planning around that scenario.

Finally, of course, we cannot control the time at which someone will be apprehended. And when someone is apprehended the arrest warrant and the application, we assume, will become available to defence counsel. And because we do not know when someone might be apprehended, again we thought that the cautious way to proceed was to assume that the warrants would become

public, and to plan the "necessary and appropriate" -- to use this Court's phrase -- measures that should be taken in advance of that event.

The steps that we have completed are the ones that we believe are necessary and appropriate, and we are in agreement, as we understand it, with VWU that those measures are now fully in place.

The context here I think is important, before I get to the steps that have been taken. It is important to understand the overall security situation in northern Uganda, which is very much different than the situation that is described in the warrant application.

Since May 2004, which is the last event reported in our warrant application, the security situation in northern Uganda has improved dramatically, and in fact the crime levels now are at a much, much lower rate than they have been in either of the prior two years. So if you took the area from September now back a year to September, or even June to June, the numbers of killings and abductions on a monthly basis are in the tens, or maybe as high as 50 or 60 at the most active times. Whereas at the time we prepared the warrant application the levels were more like up to and over hundreds in a month.

So the security situation overall has improved

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

a great deal. There have been no large scale attacks directly on IDP camps since June 2004. This characteristic of LRA attacks, which was very prevalent in the time period that we investigated, has now become something of a thing of the past.

Even in the last three months, as we have been tracking LRA activities through our multiple sources, which include (Redacted) (Redacted) we essentially now have information fed in on a weekly basis about where the LRA is active and what they are doing.

In the last three months there has been a further decrease, and in fact in this month there are very few killings and very few abductions. But the picture from July, August and September is about as good as we have seen it since we have been involved in this case, since January of 2004.

The sources that we have, including (Redacted) agree that LRA capability is significantly degraded right now. The image that was true at the time we were working on the warrant -- which is large, large groups, hundreds of LRA attacking camps wholesale -- is not the way that LRA is operating now. They are operating in very small groups, scattered about. They actually have been ordered by their leaders to try to move in small teams

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

so they are not as easily detected and caught. The types of attacks are small level ambushes or attacks for food or money or weapons on the outskirts of the camps. There are road ambushes, things of that nature. But the character of the attacks also has lessened in gravity.

Obviously it is significant now that the very highest commanders now are scattered across three countries. This also impairs the ability of the LRA to plan without detection, and is another thing that we consider a positive factor right now in the overall security situation.

Through this I have emphasised how the security picture in northern Uganda is very good. But also, as your Honours are already aware, it is also dynamic. And, as we pointed out in our provision of additional information, the possibility -- although the trend is very, very good, and the moment is very, very good, there is also always the possibility the dynamic will change. For example, one of the things there is concern about now is: what happens if LRA comes back from DRC and they are re-armed, or they have linked with other groups? Then it could be a very sudden situation where we are again looking at a degraded security scenario.

So I would emphasise to the Court that one of the factors in our mind has been capitalising on a time

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

where it looks very, very good from a security standpoint, relative to the other times that there have been. Obviously there is an ongoing conflict, and the risk will never be zero. But in terms of the general security scenario that is presented now, it is quite good relative to any other time we have been involved in the case.

In terms of the precise steps that we took in connection with witness and victim protection, again this will be supplemental, but from the very beginning -- and I should clarify that the standpoint of VWU is very much that the overall security plan -- what VWU terms "the overall security plan" -- is in place, and it has been in place for some time. Because the idea is that, starting from the very beginning, we as the OTP minimise the use of witnesses and victims who were in dangerous residences, in other words usually (Redacted) (Redacted). So the measures we took since the beginning, if there was any other way to prove it we tried not to use victim witnesses; and, secondly, through a protocol developed with VWU, we essentially eliminated many potential witnesses because they lived in unsafe areas. So most of our witnesses (Redacted). And I do want to emphasise that point. Our witnesses are mainly located in areas that were adjudged to be safer

from the beginning, when we interviewed them. So those measures have been undertaken since the very beginning of the investigation.

(Redacted) which is something that your Honours have enquired about in the past, has now been tested in (Redacted). The (Redacted) are named in our Application of the Provision of Additional Information. (Redacted) (Redacted). So we have completed really to almost 100 per cent coverage of our witnesses the (Redacted).

(Redacted) and we were present for them, and all the results were adjudged to be satisfactory, and in some cases better than satisfactory. We also, as we mentioned in our application to the Court, did as a follow-up to those sessions, give constructive criticism about how the response could be even better than it was the testing. And obviously VWU continues to monitor, and will continue to roll out testing on a periodic basis. So all of that went very positively.

With respect to the (Redacted) one thing that we have managed to do as a result of all the re-interviewing is again to advise our witnesses of (Redacted) (Redacted), so that we are sure that either if someone tried they were able to get through, or that

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

they know all the updated information that will allow them (Redacted).

And what we have found so far is that (Redacted) (Redacted). But now we have better assurances that everyone has the most up-to-date information and that (Redacted).

With respect to (Redacted) and this is an issue of -- really, as I just mentioned, it is mainly an (Redacted) (Redacted)

(Redacted)

In terms of camp security, your Honours were aware that we had arranged a co-operation agreement which allowed us to seek the aid of (Redacted) on this point. (Redacted) or a matter of security of the overall civilian population of northern Uganda is obviously a responsibility of the Ugandan Government, first and foremost. And what we have done is we have had consultations with (Redacted) (Redacted) and we have had meetings as high as with the Minster of Defence of the Government of Uganda. We travelled to meet him in Kampala, and he travelled to the Hague for a weekend meeting with the Prosecutor. Firstly we have advised them of the view that it is their primary responsibility. They have been advised of the locations that are in the warrants. In

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

fact, they knew those locations through RFAs already, but we reinforced to them that they were responsible for protecting these areas. And they have undertaken to provide the protection, and have represented that they have taken the protective measures that are necessary and appropriate in their view, in light of looking forward to public disclosure of the warrants.

We discussed the matter of public disclosure of the warrants with the Government of Uganda as well, in hypothetical terms, and their preference was very much that the warrants be public for clarity; to remove speculation about places that were not the focus of the investigation, that LRA might mistake as being places of the investigation.

So there are a number of factors, but after extensive consultations they have agreed to take the measures, and they have represented to us that they have taken the measures.

What we have done on our side is set up a very extensive network to monitor the progress of those security measures. So from sources (Redacted) from which we can now get almost daily reporting, in both the (Redacted) which covers the areas of northern Uganda which are of interest to us. But we also have added to that very

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

good reporting from (Redacted)
(Redacted)
(Redacted)
(Redacted)
So that, for example, in advance of this hearing we were able to reach out to the network and get a round-up of exactly what was happening in terms of (Redacted). What that enables us to do is: we know there are improvements that have been made on the (Redacted) then we can confirm that those improvements are either in place or out of place, and whether or not they are appropriate to what we see to be the security situations in those areas.
I should emphasise that another aspect of the (Redacted) (Redacted) security that has been very positive is that, since the attacks that took place in the warrant, (Redacted) has taken structural changes to the way that they approach (Redacted) protection. For example, the formation that was typically used by the (Redacted) at the time of the attacks in our warrant application was a situation where the (Redacted)
(Redacted)
(Redacted)
If your Honours remember the pictures, the diagrams of the attack sites, the (Redacted) detach was almost typically right at the edge of (Redacted). It was

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

determined that that was not safe. All that happened then was that if LRA attacked, if they overran the detach, civilians were caught in the middle. So now the (Redacted) has changed that tactic and they deploy their detaches a further distance out, but with perimeter guarding that is more effective, or at least more effective in the judgment of the context that we have.

In addition, there are mobile forces who reinforce the (Redacted) areas. There are other things I could describe, but the essential bottom line here is that all the reporting that we have, from the variety of sources I described, agree that the (Redacted) right now is much better than it was a year or a year and a half ago.

In fact, the results are seen in the crime statistics I mentioned earlier. Based on all the information that we have we think (Redacted) is doing the job it needs to do to keep the (Redacted). Again, a highly dynamic situation, but there is nothing we could say at this point in terms of a criticism of what they are doing as a matter of managing (Redacted).

And of course it is important to recall, and we have paid a fair amount of deference to this: they do not just protect the (Redacted) that are in our warrant application. Of course they are responsible for

protecting hundreds (Redacted). So we have been reluctant to suggest this or that because we are aware that every time we want to shift a resource somewhere, it will mean taking a resource away from someplace else. That is why we really shifted to a monitoring function, and tried to determine if there were deficiencies in the system. And there are none that we can see now.

In terms of --

MR THE PRESIDING JUDGE SLADE: Could I just stop you there, and ask you a question. You say that the (Redacted) is more an issue for (Redacted).

Is that generalised to (Redacted)-- and there seems to be hundreds of it? But we are concerned with the (Redacted) that are referred to in the Prosecutor's application. Is that statement drawing a marked distinction between (Redacted) relative to the security (Redacted) of any difference in relation to the (Redacted) that are subject to the ... It appears to me that there ought to be a difference.

MS CHUNG: Yes, Mr President, there is one. Maybe not as great as the Court might anticipate. But the attack sites, when you limit it to the (Redacted) there are (Redacted) (Redacted) (Redacted)

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

It is true, some of our witnesses (Redacted) (Redacted). Again, though, I have to cast my mind over -- we made a conscious effort, for example, to pick witnesses that lived (Redacted) (Redacted) are generally safer than the camps. There are witnesses who are (Redacted) I do not want to overstate the case. But I think as a general rule there are probably (Redacted) than your Honours might imagine absent this presentation.

The issue of (Redacted) is more really an issue (Redacted). And I guess another relevant factor here is: LRA has now moved to the point where it has sort of withdrawn from all the areas that were at issue in our warrant application. Now all the LRA activity is very much focused in Kitgum and Pader districts. (Redacted) (Redacted) (Redacted) (Redacted) (Redacted) (Redacted) (Redacted) that area also has been (Redacted) for a very long time now.

So the number of witnesses who now (Redacted) that are considered relatively unsafe areas is very (Redacted) in fact, (Redacted)

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

(Redacted).

MR THE PRESIDING JUDGE SLADE: Thank you. We do not want to stray too far, and we do not want to interrupt your stride, as it were, but I think Judge Diarra would like to ask a question also at this point.

Judge Diarra, please.

JUDGE DIARRA (interpretation): We remain in the same framework, Madam Deputy Prosecutor. You said a number of kidnappings were reduced. I would like to know if the same areas are targeted, or if these kidnappings are perpetrated indifferently throughout the country?

MS CHUNG: The areas of kidnappings and abductions now are limited to Kitgum and Pader districts, and in fact very much limited at this point to Pader district. So the (Redacted)

(Redacted)

If you were looking at a map -- we map the LRA incidents on a weekly basis, and you can actually see the shrinkage of how they have been pushed back into a very, very central northern location. What that means is that if you look at (Redacted)-- we also have the ability to map this -- (Redacted) (Redacted) and certainly not at the same level of attacks as when the warrant application was drafted.

The only other points I had with respect to the overall security plan is that, as your Honours are aware, we have done extensive security assessments of nearly all the witnesses, any witness who might even arguably be at risk. The only witnesses who were free of re-interviewing on security issues were the ones that are like (Redacted). So really anybody who was anywhere out (Redacted) was re-interviewed.

(Redacted)

(Redacted)

(Redacted)

(Redacted)

So we are very confident at this point that our contacts with our witnesses and victims is very good. And in fact we are at the point now where they (Redacted) if they have any small thing to report.

So it is a bit of an intangible thing, but it is something that demonstrates to us that we are at a higher level of preparedness than we have been in the past.

(Redacted)

(Redacted)

(Redacted) and those questions we can also answer, but I have given the first level of information about

that.

So as a summary, recognising that zero risk is not really an attainable goal here, unless we decide that we are never going to unseal the warrants in a conflict situation, we have undertaken to manage all the risks that we foresaw, and we believe that we are prepared, and certainly that the work that has gone into reaching this stage, the stage where we can report to the Court on this serious and important matter, that we are ready, that we have reached that point. And we feel good about the time that we have devoted to it, we feel that the efforts have paid off. We have very good information now, I think possibly better information than almost anybody about movements of the LRA and the corresponding measures taken by the UPDF in response to that.

So for all those reasons we continue to request that the unsealing be ordered to take place as soon as is practicable. Your Honours are aware that we had requested the date of this Wednesday. We have maintained the state of preparedness for that date. If there is any possibility of retaining that date we would continue to request it. But obviously we recognise the constraints that the Court operates under.

So thank you, your Honour.

MR THE PRESIDING JUDGE SLADE: Thank you very much. Now may

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

I turn to the Victims and Witnesses Unit.

MR DUBUISSON (interpretation): Mr President, distinguished members of the Court, I will give the floor to Christian O'Brien, who is the Protection Officer for the Unit.

MR O'BRIEN: Mr President, your Honours, thank you for the opportunity to address you on this point. But basically I do not have very many comments, apart from the fact to say that we concur with the comments of Ms Chung when she was discussing the overall protection plan for Uganda.

There are just a couple of comments that I would like to add, and that is that the Victims and Witnesses Unit, and in particular myself, has worked very closely with the Uganda investigation team almost from the very first missions. So much of the protection plans that have been put in place have been organised together, and by mutual agreement.

The investigation team has consulted us, where appropriate, with regards to protection of the victims and witnesses, and we believe that the protection systems in place here at the moment are appropriate for us to continue with our work down there.

As I say, we work in good co-operation; our capability on the ground is improving, with increasing in staff; the (Redacted) and will

continue to be monitored by our staff in the field.

At this stage, if there is anything particular that you wanted to know about the systems, I am very happy to answer it, but effectively we concur with the comments of Miss Chung.

MR THE PRESIDING JUDGE SLADE: In terms of concentration of these measures, I am trying to pursue the distinction between the camps and areas out of the camps. The witnesses -- (Redacted)

(Redacted)

I believe. In terms of the concentration of these protective measures, where are your efforts aimed at? Just give us some idea.

MR O'BRIEN: The measures, and in particular we can talk (Redacted), is geared towards where the witnesses are (Redacted). So effectively if there is a witness living in (Redacted), (Redacted) (Redacted).

(Redacted)

(Redacted)

(Redacted)

(Redacted). And they were the systems that we tested in August and in September.

MR THE PRESIDING JUDGE SLADE: All right, thank you. Let me move on to a second line of questions for the

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

Prosecutor; and then, as may be necessary, the Victims and Witnesses Unit, please.

Do the recent developments in Uganda and the DRC, including the movements of members of the LRA, create new risks and additional needs for the protection of victims and witnesses? You may have reflected on some of these in your first answer, but I just wanted to ask you specifically about this movement of people, and this new development, whether it has raised new security issues. If so, how are these security issues being addressed, please?

MS CHUNG: Mr President and your Honours, on balance we see the recent developments to be positive from a security standpoint. Now, I would start by saying that this movement of the group of LRA into DRC was totally unprecedented. We did not foresee it; I do not think anybody could have predicted it.

The positive aspects are that (i) it breaks off somebody who is very, very much an operational leader and a high advisor to Joseph Kony, and puts him in a place that is separate from Joseph Kony and the other commanders. It spreads out, essentially, the commander base into three different countries in a way that is good.

In fact, one of the scenarios that we do not like as

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

much would be if all the commanders were together, or that Kony was together with Otti at a time when the warrants were released. If that were to happen then the positively negative result that one could foresee is that there could be planning for retaliatory attacks that would take place, and because they were in the same place they would not be detected over the radio in the same way that we have detected some other communications.

So we view the current moment as a rather positive one. And watching the entire security situation, September is a very, very attack-free month so far, and we think the reason is because efforts are being concentrated on these other things.

Some of the other commanders, Odhiambo, for example, who also is one of the named persons, according to recent communications he was ordered into Uganda to find food and then to bring it back to Joseph Kony.

So the operations right now are not really focused on attacking civilians. And we see the movement into DRC as enhancing that trend, not detracting from it. What we do not particularly like is maybe what might follow this, because again it is unpredictable. So it does strike us as important to be in this situation, where the leaders are diffuse, the level is down. But

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

we always bear in mind that in the past when the leaders have coalesced and then come back into Uganda, it has usually been to launch more attacks. We think the capability is pretty low; even the number of fighters now is estimated to be quite low. But it is a scenario that we would like less better than we have now.

MR THE PRESIDING JUDGE SLADE: Thank you for that. The Victims and Witnesses Unit, would you comment on the same question, please.

MR O'BRIEN: Yes. Mr President, the only comment is that we agree with that comment, that the longer the LRA remain outside the areas in which they are operating, the better and the safer the victims and witnesses are.

MR THE PRESIDING JUDGE SLADE: Thank you. Very well. Thank you.

The next question is, to put it quite shortly: why does the Office of the Prosecutor seek a specific deadline for unsealing? We cannot understand the insistence on a deadline, but we want to understand it carefully.

We have noted the information, what you said, but the Prosecutor said in the provision of additional information, the statement, for instance, that resetting the date of 28th September 2005 will introduce a significant disruption to the planning process. Has

such a disruption occurred? And why was this date abandoned?

We note, further, that the OTP request for a date to have the warrants unsealed due to changed circumstances in the DRC has been modified somewhat. We note, in particular, the statement that if a public announcement from this Court were to interrupt the meetings and discussions currently underway in the DRC, with the LRA forces led by Otti, a potential opportunity to apprehend Vincent Otti could be lost. That is a statement that we have noted.

With these in mind, is there a risk that circumstances may change yet again such that the OTP may again request a different date for unsealing? And what exactly is the significance of 5th October, please, Ms Chung?

MS CHUNG: Mr President and your Honours, the original date of September 25th was planned around, and a lot of the co-ordination was described in the provision of additional information. In order to explain the changes in our position -- and we readily concede that we asked for the date to be moved after we really had planned around the 25th. I think to explain that, it is important for us to emphasise to the Court that we were very much reacting to an unknown situation. We knew at

the time that we provided the additional information that the LRA troops with Otti had begun moving into the DRC, and that they had arrived in the DRC. What we did not know, and which changed over that weekend, and caused us to submit the application on Monday morning, is that the engagement with the DRC had started.

That created two things that changed the date in our mind, or made it necessary -- really necessary for us to request that there not be unsealing at that particular moment. One was that there was all of sudden an opportunity for arrest, because they were face to face with Vincent Otti, and there was a possibility of working something out, or beginning to make contacts with our partners in DRC to see what could be done; because it could have been a situation where LRA came in, stayed for a while, left, or did not ever reach whoever. But what happened was: the DRC forces went out to meet them. And what we learned over that weekend was that they were face to face; they were having meetings.

The second thing was that it became dangerous because we did not know enough about the situation, and we did not want the arrest warrant announcement to potentially burst in on some talk or engagement that was going on where the people who were involved did not know about the warrants before being face to face with the

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

LRA troops.

So for those reasons we did not want to be responsible for some kind of mistimed engagement between LRA and the DRC forces, or even with MONUC, because we were not sure what was happening at that point. We just did not have enough information to make sure that a public announcement would hit at a time that was safe for those who were engaging in these negotiations in the DRC. So we thought it was important to come to the Court and ask that we be allowed to tell the partners to capitalise on the arrest opportunity, but also that we not have a public announcement at that specific moment in time, because we just did not have good co-ordination with what was going on, on the ground.

What has happened since then, that has cause us to maintain our state of readiness, and to continue to ask the Court for unsealing at the earliest possible date is that essentially the information -- and this has been publicly reported, it has been confirmed by our sources -- is that the engagement was not successful. LRA have not agreed to disarm, and now the talk is about some kind of action to disarm them forcefully, or to push them out of the country, or even to engage them militarily. Those are I think the possibilities that you can foresee when you read the press reports.

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

For that reason we do not have this fear that we are interrupting in a dangerous way the negotiations. We have already, because your Honour has authorised us to do so, been able now to inform the people who are in the negotiations, so there is no surprise element that would potentially impact the negotiations in a bad way. The only surprise element would be against the LRA troops.

So that is what has happened to change the date of the unsealing, and then to cause us to now assess it as: no, but the moment of danger is being controlled; the opportunity for arrest is just at vivid as it was a week ago when the engagement first began; and now we have, in addition -- I do not want to intrude on the Registrar's province, but there has been transmission to the DRC, we have sent word of the existence of the warrants to the people who are engaging this LRA group in the DRC. So we continue to believe that this is a very, very good moment to move ahead with unsealing.

And with the Government of Uganda all this planning we had done to make sure that we were co-ordinated, with protection around a certain date, we have been able to maintain that in this week. So the idea of moving forward as expeditiously as we can still remains important to us.

I think an additional factor, which is very, very

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

important here, is that now there are leaks. And it is not because people are disregarding the Court's confidentiality orders. But the example of last week was I think exactly the kind of thing that happens: Ambassador Swing, who was speaking to the UN Security Council about the DRC, he had private notes, and he had been informed about the ICC warrants. He raised this in the Security Council, which was of course an absolutely appropriate thing for him to do, and some reporter got a hold of his notes. So he was making every effort to be confidential, but then it was reported in the papers that ICC warrants exist.

It is important, I think, for the institution, because soon we will be in a position -- and it is happening even today -- that it is being reported more and more that either warrants are imminent, or even that they exist.

We cannot sustain this position for very long. We are already being asked to either confirm or deny these reports. And it is not just a matter of being truthful about what the progress of the case is; there is also a very big security implication, because our contacts in Uganda -- and particularly (Redacted) (Redacted)-- are very concerned that there be clarity about how far the

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

warrants go. For everybody else in the LRA who potentially could be reintegrated into society and convinced to surrender, it is very important that everyone in the LRA know that the warrants are for the top, top leadership. And that has been emphasised to us many times.

So we are in this moment where people are already talking as if the warrants exist; we have an opportunity to confirm it in a timely way, in a true way; we need to send a message to those who might harbour the LRA, or give them support, that that support and harbouring should end -- that is another thing that cannot be established in this intermediate ground. There is also a big need in Uganda -- it gets raised time and time again -- there is a lot of speculation about what the LRA warrants are going to do. There is still a lot of fear that we are going to be prosecuting children; there is a lot of fear that mid-level commanders are being sought in these warrants, maybe even ones who have already surrendered. That is one of the reasons the Government of Uganda gave to us for their preference for unsealing the warrants *in toto*, was so that there was absolute transparency about what the Court is doing.

I do think it is a critical moment for the Court, because certainly there has been talk since June that

these warrants are out there. And the idea that the case has moved forward into the next stage is one that we will be called upon to confirm or deny. My suspicion is that the media attention, even if we were to defer the date, or wish to defer the date, I suspect that in the next week or so it is going to reach the point where we would probably be filing some kind of emergency application to the Court, because something will happen -- just the way that this mushrooms usually -- something will happen that makes it necessary for us to say more than we are saying now. I do not know if that would be full unsealing, but certainly we think we are prepared for unsealing. But now we are in this halfway state that really is not very sustainable. Among other things, it leaves our co-operation partners in a very, very bad place. We have them, and they are now working on executing the warrants, but they will wait for us to confirm that, and some of them will be asking for the warrants, and we would like to be in a position to be able to help them do that.

MR THE PRESIDING JUDGE SLADE: It also rather raises the question of the confidentiality to be attached too, which was laid down very clearly in the Decision of the Chamber. What is more particularly worrying is yet another report of yet another -- and a more

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

senior United Nations official either was not properly briefed, or went dead against his briefing about confidentiality.

Now, these matters have since occurred, since the Decision of the Court, and since the making of the urgent application of the OTP specifying 5th October, setting yet another deadline. And it is not the revelation from Swing -- or rather the forgetfulness of Ambassador Swing and his private notes that justifies the setting of this date. We are trying to understand what is really the rationale and the explanation for setting a deadline which, as we need to look at in terms of the tasks that need to be carried out -- and we will do this in the course of this status conference -- may or may not -- possibly more not -- be attainable because of the nature of the work that needs to be carried out.

But for the moment, take that as an observation from me. But we will return when we begin to look at the methodology that will be involved.

I think we need to move ahead, because there is a range of questions, and I would now like to invite my brother, Judge Politi, to put more questions to you all. Judge Politi, please.

JUDGE POLITI: Thank you, Mr President. My questions relate to the transmission of the requests of arrest and

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

surrender, and to the execution of the warrants.

On the transmission of the requests for arrest and surrender, my first question -- I would say my first and second question, which is connected to the first one -- is addressed to the Registrar.

The question is the following: what is the status of transmission of the warrants of arrest and the request for arrest and surrender issued by the Chamber? Has the Registrar been able to complete this transmission?

The other question, which is connected to the first one, is: what difficulties, if any, have arisen in the process of transmission?

MR DUBUISSON (interpretation): Mr President, your Honours, as regards the request for arrest and surrender, and the arrest warrants and annexes, they were notified on Friday 30th September to the authorities of the Democratic Republic of the Congo and also to the authorities of Uganda. We have notified the Attorney General of that, the Attorney General of the Democratic Republic of the Congo, and we have transmitted the documents to the Ministry of Justice in Uganda. The Ministry -- the Registrar is currently notifying the documents to the Ambassador of Sudan, to refer to the third country.

We have of course pointed out to all of the

authorities that the arrest warrant and the annexes and the request for arrest and surrender are still under seal and remained under seal until this Chamber ordered otherwise. So we have been relatively clearly on that matter, bearing in mind also that there has been a leak, a leak which Ms Christine Chung just referred to on behalf of the Prosecutor.

As regards the difficulties, we have encountered no difficulty in servicing the documents and notification of the documents. We are now looking ahead to the future steps which the states will need to take place to execute the documents; that is to say that we have not yet had a full response from the various authorities. We are currently, in the absence of implementing legislation in the two states' parties, we are attempting to finalise a document on the standard procedures, the functioning that should be utilised by the states in question.

So that is a little report from me as regards the status, and I hope that I have responded to your question.

JUDGE POLITI: Yes, Mr President. I was particularly interested to hear whether the Registrar would anticipate any special difficulty in relation to the lack of implementing legislation in Uganda. I think he

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

has mentioned that if he has any other information to add to it, I would be very grateful to hear.

MR DUBUISSON (interpretation): Well, from the discussions we have had with the Ugandan authorities, and more specifically with a working group which has been set up by the Ugandan authorities regarding a potential procedure for arrest and surrender, the Ministry of Justice is now going to transmit the ten documents -- which I mentioned before -- to the Public Prosecutor, who will transmit them in turn to the police, which will work with the army to proceed with the arrest. It will undoubtedly be a military operation.

We wished to establish which authority would be involved in reading the rights to the individuals. There are lawyers both in the army and in the police force, and we have been assured that this will be handled correctly. Now, on the basis of those explanations we have been informed that there would be an additional step; this is information which we obtained last Friday. We understand that it may be necessary to transmit the ten documents onto a magistrate's court, which may have to examine -- review the documents before they go further.

We have no further information on that particular step. We do not know whether it should take place

before the documents are transmitted to the Public Prosecutor's Office. But in any case, the channels which were presented to us as being the correct channels, which were presented to us by the Ugandan Government, it seems now may be different to the channels on which we had an original agreement with the Ugandan authorities.

On the basis of our initial contacts it is clear to us that, from the point in time that an arrest is made, there will be -- a very short period of time will lapse before transfer. That is the information which we have had from one of the ministries through the Solicitor General. We also enquired about the possibility of an appeals procedure on behalf of possible defence counsel. We heard that no, it would be not be possible for such an appeal to be lodged, an appeal against transfer to the Hague.

That is all of our information, I think, on this point. Thank you.

JUDGE POLITI: Thank you. My next question is addressed to the OTP and to the Registrar, and is the following: what steps, if any, have been taken by the OTP and Registrar to facilitate co-operation between the Court and Sudan with regard to the transmission of request for arrest and surrender?

You have partially answered this question. If you have any other information, both the OTP and the Registrar -- with regard, I said, to the transmission of requests for arrest and surrender, and their execution. In particular, have any steps being taken by the OTP or by the Registrar, or have been reiterated by the OTP or the Registrar to enter into an ad hoc arrangement with Sudan under Article 87(5)(a) of the Statute?

MS CHUNG: Mr President and your Honours, I would just start by saying this is an extremely sensitive matter. So I am pleased, as I have been in the past, to report the status of these negotiations, but I would hope that, as maybe you have seen from our proposed treatments of some of the other documents, that this type of material will remain sealed until objectives like the objective of arrest are indeed accomplished, because it is easy to imagine why even disclosure of this type of information could make the potentially co-operating parties not so amenable or well-disposed to co-operating.

I think I had reported to the Court previously that there have been attempts to negotiate an ad hoc agreement with the Sudanese; and those attempts continue. There is really not so much specific to report. I think that channels of communication and potential co-operation remain open. It is always

difficult to say how fruitful they will be, but we believe that we are in the final stages of negotiating an ad hoc agreement with the Sudanese.

MR THE PRESIDING JUDGE SLADE: Thank you. Mr Registrar.

MR DUBUISSON (interpretation): Mr President, your Honours, the first contacts which the Registry has had with the Sudanese authorities are taking place at this point in time. As I said, the Registry is serving documents or notifying the Sudanese ambassador. In the future we hope to dispose of an office somewhere in Sudan. To speak of logistics, we are currently in the study phase, looking into what might be possible to improve our co-operation.

JUDGE POLITI: Thank you. My next question is addressed to the Office of the Prosecutor, and is the following: what is the OTP's overall strategy to secure arrest? And which actors will potentially be involved in the execution of the warrants? Again, what international support has the OTP garnered in order to maximise the ability for the warrants to be executed?

MS CHUNG: Mr President, your Honours, I have addressed this issue in the past, and I can provide something of an update. Let me take the different cases, maybe.

The will of the Ugandans to arrest we have no doubt of. The issue is going to be: what support can they get

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

internationally? And I have mentioned to your Honours before the role that countries who provide donor aid to Uganda have played. Those are among the countries that we have notified of the existence of the warrants now. And the pressure and the support that can be brought to bear, whatever it may be, now is beginning to percolate. I think that the objective of letting states and organisations know, so that they could begin to strategise about how potentially to support arrest efforts is working; but it is very, very soon to tell in which way it will develop. Really the contacts we have had so far have been in the nature of: "We are very pleased to receive this news. Let us think about how it affects what we are doing, and what we are planning."

Even in cases where it was anticipated that the Court would move in this direction, there obviously is a new level of disclosure which comes with knowing who the targets are, where they are, and getting ready for the possibility of arrest.

So at this stage we have let the parties know who are the first tier of potential support for the warrants, and they are working in consultations with each other and with us. So I cannot report at this time that there is something concrete in terms of -- you know, it would be much more exciting if I could say

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

"There is somebody moving from here to there", but I do not think we are at that stage yet; it is just too early.

What I can say -- and this is one of the reasons that I think it is very important that there be public unsealing -- is that we do not know the level of international support that we could get for warrants, public support that would pressure the states and organisations in turn until there is unsealing of the warrants.

And so in our minds this case is very much -- over the weekend I was reading the cases of Milosevic and Karadzic and Mladic and Charles Taylor, and the various cases where there was sealing initially, and then unsealing of the warrants when witness protection and other measures were put into place. And certainly we see that, in terms of realising the full potential of international co-operation, we do not feel that we will have hit the limit of that, or anywhere near the limit of that, until we have full public knowledge as well of what the warrants contain, and the seriousness and the gravity of the charges that are contained in them.

So all the negotiations about which I previously informed the Chamber are ongoing. And I think the responses have been -- it is not something that they

were not anticipating. They knew it would come at some point, so the responses have been measured and appropriate. But it is very, very quickly after we have notified them, so I cannot say too much more in terms of concrete steps that have been accomplished.

JUDGE POLITI: Thank you. My next question is connected to the previous one, and is addressed also to the OTP. In its decision of 27th September on the Prosecutor's urgent application, the Chamber invited the Prosecutor to inform the Chamber of the governmental authorities or inter-governmental organisations notified of the existence of the warrants of arrest, and the names of the five persons for whom the arrest is sought.

The question is: which governmental authorities or inter-governmental organisations have received such notification to date? Thank you.

MS CHUNG: Again, Mr President and your Honours, I am happy to take up the Court's invitation, but again this is quite a sensitive matter. So we would appreciate if this information would remain sealed even beyond any potential unsealing of the arrest warrant application.

The transmissions the Court is aware of. We also notified various branches of the UN; MONUC; the French; the British; the Dutch; the SPLA, which is the group that is operating in southern Sudan and has now become

part of the Sudanese Government through the comprehensive peace plan; the US, which is one of the key donor countries to Uganda; and the Norwegians, which is also one of the key donor countries. We also notified the EU.

JUDGE POLITI: Thank you. You mentioned, Madam Prosecutor, that information has been given to MONUC, among other countries and organisations. Does the OTP see an important role for MONUC in the arrest of LRA leaders in the DRC? Or otherwise what kind of role is envisaged for MONUC in this respect?

MS CHUNG: Yes, your Honour, the role of MONUC is now quite important because of the existence of this group in the DRC. If there were to be an arrest in the DRC, the way it would have to be implemented is either a direct arrest by the Congolese authorities, by the Congolese army, or it could be a mechanism of a request from the DRC to MONUC to effectuate the arrest. So it was important in our view to notify MONUC so that they could be advised that they may potentially be an arresting party.

JUDGE POLITI: Following the previous question, is there any co-operation agreement being negotiated with MONUC? Is there any talk of any kind to set up the terms of this co-operation?

MS CHUNG: The co-operation agreement with MONUC is again the subject of ongoing negotiations. We have a co-operative relationship with MONUC; I would stress that. The agreement is not finalised yet, but we are working on finalising that agreement.

JUDGE POLITI: My last question is addressed to the OTP. The OTP specified that it focused its investigation on the top leadership of the LRA. Now, is the Prosecutor investigating alleged crimes committed by other leaders, and eventually planning to request additional warrants for other leaders of the LRA in the future?

MS CHUNG: Could I have a moment from your Honours? Thank you, Mr President. (Pause).

Mr President and your Honours, the investigative plan is to continue to investigate future crimes of the LRA. So as your Honours are aware the scope of the initial warrant application was -- the focus of the investigation was July of 2002 to June 2004, essentially. The plan is to investigate any future crimes and, at any time that the warrants become public, what we would like to do is forewarn and make a public announcement that we will continue to investigate future crimes.

We will continue to investigate those who support and harbour the named individuals. But it is not our

plan at the time to continue investigating the past crimes. After the investigation that we carried out, we felt that the most worthy targets were the ones that we named in the warrant application; and the investigation also bore out that the attacks were representative in a very highly co-related way with gravity.

So we are satisfied with the list of named persons, and our efforts in the future will be toward future crimes and support and harbouring.

JUDGE POLITI: Thank you.

MR THE PRESIDING JUDGE SLADE: Thank you very much for that; and thank you, Judge Politi.

I should now invite Judge Diarra, if she has any questions to put, please. Judge Diarra.

JUDGE DIARRA (interpretation): Thank you, Mr President.

I do indeed have some questions to put to the Office of the Prosecutor.

In its decision of 21st September 2005, regarding the provision of additional information, the Chamber requested the Prosecutor to specify what implications, if any, would the unsealing of the warrants, or of other related documents, at this stage, have for ongoing and future investigations, including the preservation of evidence, and for persons whose arrests may be sought in the future.

Could the Office of the Prosecutor clarify whether unsealing at this stage will not instil reluctant or unwillingness on the part of the witnesses, and thereby negatively affect future investigations against other individuals?

MS CHUNG: I think our assessment at this point in time is quite different. Initially when we asked for sealing there was much, much work to be done on witness protection and the preservation of evidence. We have now accomplished that work, and we feel that, to the contrary, we are reaching the point where the lack of public warrants is impairing us.

So I want to emphasise to the Court I know that it is easy to think about this, and we certainly in the past have thought about it, as: "Well, confidentiality can be a very good thing, it is good to maintain it". But we really have reached the point where confidentiality is beginning to impair us.

Let me give you a couple of examples. For example, our insider witnesses, and your Honours are well aware of how vital the insider witnesses are. There is a huge fear in the insider community that (Redacted) will be prosecuted by this Court. And in fact even insiders now that we have met with four or five times are still asking us in a very distrustful way: "Am

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

I going to be the next person to be prosecuted?" And now, to add to that, we have met with them about their own security.

So they are feeling as though they have been forthcoming with us, they are willing to help provide information to the investigation, and yet they still have no assurance from the Court that they are not the ones who are going to be prosecuted; they have no assurance from the Court that young children in their community who have returned are not the ones who are going to be prosecuted. And they also are being reminded that they are putting their own security and safety on the line to help the investigation along.

Another example is the victims. It is so important all the security issues, but it is also I think important to bear in mind -- and we meet with these victims all the time -- that they came forward because they wanted the situation in northern Uganda to become known. And now when we meet with them for the fourth or fifth time, they begin asking us: "When is it going to come out that there are going to be arrest warrants?"

So the security is now in place, and it is difficult to maintain. For example, (Redacted) (Redacted) (Redacted). It is not a small thing to

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

(Redacted)
(Redacted)
(Redacted)
(Redacted)

So when I talk about maintaining the security measures in anticipation of a chosen date, these things happened at a certain time because we anticipated that we would -- it was all the co-ordination that went into that date. And now we have sustained that, but these measures are the most effective when you first put them in place, because of course over time people get to know about them.

But essentially where we are now is: everything that we think was necessary and appropriate is done. And we are starting to hear even from our witnesses and victims that we were out to protect: "Okay, well when are things going to move forward? And can we have clarity and transparency about what the scope of the investigation is going to be?" So we do not think it is going to have any negative effect at this point to be unsealed.

JUDGE DIARRA (interpretation): Ms Chung, this is quite an important matter. Emphasis has also been laid on crimes committed by the Ugandan authorities. Has the Office of the Prosecutor taken measures to investigate those crimes also? Or is the OTP envisaging to do so?

MS CHUNG: Mr President, and your Honours, yes we have. And I think it is important -- and this is again another matter about which clarity to the public and some kind of outreach, really -- you know, we have withheld from doing that.

But essentially what has happened in this phase of the investigation is we did gather information; we asked questions; we invited submissions from (Redacted) and anybody else with information; we gathered information from the (Redacted). And we have assessed all that information using the same parameters that we use to assess LRA crimes, and the judgment of our Office was that the LRA crimes were sufficiently more grave that that should be the first set of warrants.

That does not mean that enquiries into the UPDF allegations and allegations against the UPDF will end; they are ongoing. And we continue to assess information that is coming out all the time, including in this last week information from the (Redacted) (Redacted).

If I would be permitted to do so, I would like to supplement my prior answer, because I realised we have received -- your Honours, I do not believe we have discussed this person before, but Betty Bigombe is somebody who is well known; she has been the negotiator

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

with the LRA for the past years, and the most successful efforts to attempt to negotiate an end to the violence have been through her.

She wrote a letter to the Office of the Prosecutor over the weekend, and the letter in its text makes the point about how, in terms of the witnesses and the securing of evidence, it is actually impairing not to have public warrants at this point.

The text of the letter, which is dated from yesterday, says:

"Dear Mr Prosecutor, I have taken the liberty to write to you, sir, to express my concerns about the secrecy of the secrecy of the Decision taken by the Court. I have read in the newspaper that arrest warrants for the LRA are imminent.

"As someone who has been mediating between the Government of Uganda and the LRA, I would like to advise that it will be better for the people of northern Uganda if the arrest warrant is issued in a transparent manner. This will help people to understand and know who are indicted. It will also help me to explain to the people of Uganda, and LRAs who are not indicted and still out there, that opportunities still exist for them to come out and be reintegrated.

"I hope that you will take this humble advice into

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

consideration."

This was a letter addressed to the Prosecutor. This is someone who has been critical of the ICC intervention, and she obviously recognises at this point that the case will probably proceed. But we certainly think it is significant that, in terms of what advice she is giving if the case is going to proceed, our assessment is in line with hers. We do think this type of clarity is important to moving the case forward from here.

MR THE PRESIDING JUDGE SLADE: Thank you for that. I think this will be a convenient time for the status conference to have a bit of a break. Perhaps we should do that, and I am told that we can come back in half an hour, at 5 o'clock. I think the interpreters would find this adjournment helpful.

Incidentally, Madam Prosecutor, the reference to the letter from Betty Bigombe might mean that we need to have it introduced into the record. That appears to be the case, and perhaps Madam Registrar could look to that. Let us take an adjournment now, and come back at 5 o'clock.

Break at 4.31 pm -- End of break at 5.04 pm.

THE USHER: All rise. The International Criminal Court is now in session. Please be seated.

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

MR THE PRESIDING JUDGE SLADE: The status conference is resumed. May I invite Judge Diarra to continue, please.

JUDGE DIARRA (interpretation): Thank you, Mr President. I would like to ask the question, again to the Office of the Prosecutor: could the Office of the Prosecutor restate the likely impact the unsealing of the warrants would have on the potential of the Chamber to take protective measures for the purposes of forfeiture, in particular for the ultimate benefit of victims.

MS CHUNG: Mr President and your Honours, we would be very hard-pressed at this point in time to assess this impact and to offer guidance to the Chamber about preserving assets for forfeiture because, as a factual matter, there is very, very little information that has come to light in the investigation about assets or property that might be available for forfeiture. So certainly this is a matter that we have asked very routinely about, and it is important for other reasons in the case as well; it is important for investigative leads. But at this point it is difficult to imagine what orders could be crafted, if the Court were imagining such orders, because we just have not very good information about the availability of any assets.

JUDGE DIARRA: Thank you. In paragraph 12 of the Prosecutor's application, the Prosecutor submitted that

unsealing becomes a feasible and potentially powerful means of garnering international attention and support for arrest efforts. Could the Office of the Prosecutor clarify why and to what extent it still sees a need for unsealing following the recent issuance by the Chamber to the DRC and Sudan of requests for arrest and surrender.

I would like to state that with the principle of the existence of the arrest warrants, is it not enough in itself to motivate all the state parties to support the arrest of these accused persons?

MS CHUNG: Mr President and your Honours, we do not want to understate the significance of the authorisation that we obtained from the Chamber last week; it was very important. It was a very important step, and the ability that we had to notify the different people involved in the negotiations in the DRC was critical. In fact, it has generated some momentum.

I realised in the break that one answer that I failed to give Judge Politi is, in response to notification from us, now we have a situation where MONUC is moving to reinforce the DRC forces that are in the area. They are making an attempt to surround the LRA forces there. It is not likely but it is not inconceivable that there could be an intervention with

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

Vincent Otti.

Everyone's aim is to get the LRA either disarmed or out of the DRC, if necessary by military force, as soon as is possible. So the idea that we were able to notify MONUC and the DRC, and that these actions came as a consequence, demonstrates how powerful the notification was.

At the same time, though, I think this introduces the idea of how critical the moment is to proceed. Because although the actors and the states and the organisations have the notification now, and the transmissions have been made, there is a vital importance in getting public support to put increased pressure behind the execution of the warrants. It is just a matter of: we will never know exactly how much support can be garnered until the warrants become public, and what can potentially be done behind the bilateral communications that we have.

The UN, for example: we know now that different arms of the UN have this information. They have to co-ordinate; it is a very diffuse organisation. And the fact that comments are coming from the Political Affairs Department, from DPKO, from MONUC, it takes a big effort. And it will ultimately take a public effort -- public knowledge of what is in the warrants -- to make

sure that these efforts are properly co-ordinated.

So one point there is that, despite the ability to transmit, and the ability to notify bilaterally our co-operation partners, we do think there is much to be gained by having international support behind the warrants. The effect of what the Chamber has written in those warrants cannot be underestimated; and the impact that it will have on the community. There is a reason that this is the biggest neglected humanitarian crisis: it is because nobody talks about it. And to get the support of NGOs, IGOs and the general public behind the idea that these are people named in warrants of arrest who need to be arrested and brought to face their day in Court, regardless of what the outcome may be.

That is a type of support. It is not theoretical. It has happened. It has happened with Milosevic, it happens today with Karadzic and Mladic, and these are exactly the examples when you look back at the cases and you see the unsealings.

These are the reasons the unsealings were ordered, was that you reached a point where there was no longer a reason for sealing, and it was necessary to really ensure that you capitalised on a moment behind transmission.

So we have transmission now, but where is going to

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

be the public support for and the outcry for arrest, to make sure that pressure continues to be exerted.

Another example that also bears on Judge Politi's question is the Sudanese. The Sudanese co-operation effort -- our consultations with them have been ongoing. They contacted us to start renegotiating the agreement after the coalition Government, the new Government came into place. So they recognise that there is at least some interest to be gotten by having a co-operation agreement with the OTP.

This is a government like all governments: it will respond to outside pressure. And it is a critical point, because the support from the Sudanese in the past has been the reason that the LRA persists. So giving notice to people at this point, when we are starting to get support for the arrests, giving notice simultaneously in this moment: "Do not continue to support the LRA. If you are inclined to harbour, or provide weapons, or provide means, you should be on notice that these are individuals named in arrest warrants." I always want to use the term "indicted", which is not correct here.

But this is the kind of support that we are looking to get to this next phase. And the idea that right now all the other things that I mentioned -- the security is

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

as good as it has ever been. We have always had a view that the first day security was in place -- I was trying to think over the break about this issue of the day, and I think there is a fundamental maybe difference in approach, or -- I do not want to read too much into it.

But when we sat with VWU what we thought about was: what is the first day that witness protection will be ready? Because that is the day we want to unseal. Because we saw the set-up as being so good, the security situation as so good right now. And the opportunities for arrest are in three places, which just from a standpoint of odds is very good; but when you look at the situation in DRC now, it is ideal. And it is a moment that could be lost.

When we had that planning meeting before we submitted the application on September 9th, the day that we agreed we would all be ready was September 25th, so that became the day that we put in the warrant -- application to unseal; because our view was very much: the presumption is a warrant is an open instrument. Here there were reasons to seal, and we requested sealing on that basis. But then, when we realised that we were approaching the date when witness protection would be finished, our view was very much: the context is good enough, and the security measures are good

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

enough that we should be looking to go forward as soon as we possibly can.

Obviously it means that the Chamber still needs time to do its work. But from the way we were thinking about it, and I think the events of the past week have only emphasised this: now we have a certain momentum. MONUC is aware; DRC is aware; the Ugandans are being as fully co-operative as they have ever been, but they also see an opportunity here; and the Sudanese have now come back and are negotiating with us.

So in order to make sure that we capitalise on this moment, we really are very interested -- and anxious even -- to move forward as soon as we possibly can.

And we know, because we have lived with the case long enough, that bad things happen as well. When Garang died, that is something we did not foresee. It could potentially have had and could still potentially have very bad consequences for arrest prospects and co-operation.

So there are these items that we will never control, and we see now a confluence of factors coming together that really make it a very, very good time. And if we eat into the time period where the situation is good there is always the risk that the situation will change. LRA attacks tend to be cyclical, seasonally; usually

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

starting in February or March they start increasing again. We would not expect, given the current capacity of LRA that there will be a significant increase. But we would rather release the warrants into an environment where we can make the most of the time between now and the wet season, because we know historically that that is a more active time for the LRA.

So unfortunately in these hearings there is not often time to discuss many, many of these things that go into the thinking. But these are the reasons why, in consultation with VWU, we chose the day of the 25th. We had this interruption, a "disruption" as Judge Slade called it, because there was this unforeseen event of the DRC movement and the engagement. But we are confident now that, having informed the relevant parties, we are still on the plan.

There has been an enormous amount of co-ordination over this date. It takes a lot of co-ordination with the Government of Uganda and its various ministries to be ready on protective measures, to maintain those measures. There has been a lot of co-ordination with VWU and other arms of the Registry, really now daily meetings about what information is going to be disseminated at the moment that the warrants go out, for protection purposes and also for outreach purposes.

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

So I just feel as though I would not want to leave this room without conveying all the work that has gone on even within the Court in preparation for this day.

There are other issues that we have raised to the Court like the unsealing of other documents. We do not see those as being as high a priority right now as being able to tell the public about the warrants.

I do not know if that is helpful information to the Court, but certainly I know standing here, for example, we would ask for two days' advance notice to the UNDSS. Certainly I know standing here that that cannot be accomplished between now and Wednesday. What I can tell the Court is that with UNDSS, we contacted them today, and they have already actually taken some measures on their own in response to the DRC situation. So the measures they would have to take additionally we think can be accomplished in maybe even a shorter timeframe than two days.

But this is just in the nature of letting the Court know and letting the Chamber know what is happening in the planning on our side. But certainly in direct response to Judge Diarra's question, we do feel that it is necessary to have more than the ability -- it is significant, the ability we have had so far. But it also created even more, I think, of a moment to

capitalise on, and that we risk losing if we wait too long.

JUDGE DIARRA (interpretation): This important, fundamental response or answer you have given -- this important answer leads us to another question straightaway. Indeed, an ambiguity seems to be there in your position with regard to your request or application, your request to make public the warrants of arrest, and at the same time to leave the request for arrest and surrender under seal. Perhaps you could explain that position to us, clarify that, please.

MS CHUNG: Yes, your Honour. The basis for requesting the request remain sealed was that, under the terms of the Statute, usually the request and the responses remain confidential. Looking at the request drafted by the Court, there are certain requests made directly to the states which -- I think there is every reason to believe that they will make their efforts to comply with them. But it could be considered more in the nature of a direct dialogue with the state, of the kind in nature that the Statute envisaged would be kept confidential.

So while with the warrant there is a presumption of openness, in the Statute itself it seems to create a presumption that the request will remain sealed. So that was the reason for that distinction.

JUDGE DIARRA (interpretation): I will come on to my last question. Following up on the question of Judge Politi, my colleague, you responded that the Office of the Prosecutor did not have the intention to investigate into other leaders of the LRA. If, during the investigations concerning the leaders who are already being prosecuted, serious crimes are revealed with regard to other leaders, and even lower level leaders, I do not understand that already an imperative decision has been taken not to have investigations against such persons.

Perhaps you could give us some explanations and clarifications in that regard. Thank you very much.

MS CHUNG: Your Honour, I just want to make sure that I understand the question correctly. The question is: has an imperative decision been taken with respect to other persons in the LRA to the extent that serious crimes are revealed by the investigation? Is that correct?

JUDGE DIARRA (interpretation): Following the question that my colleague Mauro put to you, you responded here that the Office of the Prosecutor did not have the intention to investigate into other key leaders of the LRA. This taking of position, imperative decision-taking, seems to be concerning, worrying as far as we are concerned.

Because during the investigations against the current leaders, who are currently envisaged, if serious crimes are revealed committed by other leaders, even lower level leaders, then I really do not understand that they should already escape from any type of prosecution.

MS CHUNG: Thank you. Mr President and your Honours, maybe I can clarify this way. I do not want to leave the impression that key leaders of the LRA are being left out. In fact, the clarification is helpful because in terms of key leaders throughout the time period up to the present, the individuals named in the warrant cover the key leaders. And in fact, to the extent that there are people that you see in the hierarchy who are left over, there are reasons that they were not pursued. For example, a couple of them we know are very, very ill and are basically non-operational now.

In terms of up to the present time, we feel that the five people named are the most responsible. And even if somebody held a rank that was higher at any given point in time, there are reasons based in objective factors that we did not include them in the ultimate target list. This decision obviously will be reviewed by the Chamber. But we feel that we have justifications for why the list was the five. It is not based on a time-bound element; it is based on the gravity of the

crimes, and the gravity of the conduct, and their ability to carry out their leadership functions and to carry out crimes. It is based on a series of factors that some day we will put in front of your Honours in a more formal way.

We will continue to investigate future crimes, and we will continue to investigate those who support and harbour the currently named people. You are right, there was an ambiguity in my earlier answer. It is not as though we are saying that there is a window of time that we feel we have not covered. We think that even if you include all the names of the top LRA leaders up to the present time, there are reasons for distinguishing, in terms of seriousness of their conduct, the ones that were named from the ones that were not named.

MR THE PRESIDING JUDGE SLADE: Thank you very much.

Now, I want to put another line of questions at this point, aimed largely at getting some clarification on the redactions sought by the Office of the Prosecutor.

Firstly, is there a principle or criterion, or are there principles or criteria which determines or guides the proposed redactions? For example, is the focus in the redactions on a specific person or location, or a combination of these elements?

MS CHUNG: Your Honour, with the permission of the Chamber,

my colleague Eric MacDonald is prepared to answer this series of questions.

MR THE PRESIDING JUDGE SLADE: Sure. Mr MacDonald, please.

MR MACDONALD: Initially I was to do my presentation in English. But if you bear with me I will be doing it in French for the benefit of the Chamber.

MR MACDONALD (interpretation): As is indicated, it is certainly a combination of two different factors. There are others as well, but briefly it is clearly that if the victim is identifiable or not through the information which is provided in the warrant itself.

It is important I think to go back to the factors that perhaps are not -- or the evidence which perhaps are not to the knowledge of the Chamber at the time of the drafting of the warrants.

The first reference is to the (Redacted), or the (Redacted). In terms of the French translation of it, the affirmation at the start that it was sent for the (Redacted)

(Redacted)

(Redacted).

(Redacted)

(Redacted)

(Redacted)

(Redacted)

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

(Redacted).

The other victim who was kidnapped at the same time -- the movements of that person are unknown. When we speak about it, it is either still kidnapped or abducted or detained by the LRA, or -- (Redacted) (Redacted) (Redacted) (Redacted). This simple fact makes this person clearly identifiable.

Happily at the time that the warrant was issued, this (Redacted) lived in a place which was considered safe, and we have not heard about that person moving to another less safe place.

I will now deal with the other reference, that to (Redacted). Also, as the warrant states, (Redacted) (Redacted). And also in your -- this was indicated, that (Redacted) according to the sources of this information. So there were youths and adults.

The important information is that (Redacted) (Redacted) (Redacted) (Redacted) (Redacted)

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

Furthermore, there is additional information: during this attack, (Redacted) (Redacted), and that person was forced to -- (Redacted) (Redacted) (Redacted). And so the combination of these two different facts made (Redacted) (Redacted).

Currently (Redacted) (Redacted). I insist on the word "relatively" because, unlike the other victims, this situation is a bit different. In the case of this victim there is also (Redacted) (Redacted)

I will give you some information in this regard. Firstly, there is (Redacted). They have several people there, or these are (Redacted) where people do speak. There is an (Redacted). Everybody knows each other. The inhabitants of (Redacted) (Redacted) are identifiable and could identify this person.

Another important factor not to be left out is the media as well. They have made this warrant public in the form proposed by the Court, and the media could be interested in the fact that (Redacted) (Redacted) (Redacted). This might create an interest on the part of

the media. As such, this could make this witness, this victim, identifiable.

Furthermore, another factor which is important and which certainly is not negligible, is perhaps a bit more vague, is that of the (Redacted) (Redacted).

Even if the information that the judges have does not indicate a presence of collaborators necessarily in (Redacted), the collaborators or sympathisers of the LRA are nevertheless (Redacted) (Redacted), and they could try to identify this victim and to provide information to the LRA.

This is the reason why I would like to submit to you that the solution which is the most easy, bearing in mind the different or additional elements that we have provided you with, is to either substitute or replace the language or the terms that are used in the arrest warrant, or to redact the arrest warrant, to *expurge* it.

This is a practice which exists in international law and in international courts. I can provide you with examples of arrest warrants: in the Akayesu case, in the ICTR; also in the other courts, or ICTY, where the term "redacted" was used in English, or pseudonyms to names and state the victims.

So also we have other examples which we will provide

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

you with. One example of what these two arrest warrants could look like -- because we have the one from Mr Joseph Garang -- either by using language that would substitute the reference to (Redacted); or if that is not the case, completely redact the information of this order that is supplied in the warrant. I could suggest wording to the Court.

But I do believe, however, that you need to look at the legal ground upon which you may exercise this power. Article 58(6) is not useful. It is not useful for a simple reason that here we refer simply to amending or altering the nature of the accusations or, to be more specific, the wording of the accusation or charges themselves.

At the time when this stipulation was adopted, if we look at the *travaux préparatoires*, which can also be submitted to your consideration, certain countries began to realise that, given the speciality rule, it might be cautious to include in this paragraph a provision stating that prior to arrest and surrender there was a possibility of modifying the charges.

This provision was not included in the text. Why? Because this also, if you look at Article 61(4) and (9), it appears clearly that it is possible after the arrest to alter the charges and accusations. So it may have

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

seemed superfluous to explicitly state that it was possible at this stage to alter the procedure, in other words prior to arrest that it was possible to alter the arrest warrant.

So if 58(6) does not apply, what would be the provision that you may rely upon in order to redact or remove the information that we are asking you to remove? We would respectfully submit that, according to paragraphs 57(3)(c), combined with Article 68, the Chamber and the Court as a whole has an obligation to protect the safety and private life of victims and witnesses.

It is also the case that in your prerogative of issuing warrants under 58(3), you have the possibility of including a brief presentation of the facts in the warrant itself. It does seem to us therefore that it is inevitable that these descriptions and details form a part of the succinct or brief presentation of the facts; otherwise I would be led to believe that they would not have been included in the warrant.

This being said, if that information forms a part of the succinct presentation of facts, why do you have the right to create? On the one hand you can alter; on the other hand, in so far as a superior interest, namely the safety and protection of witnesses and victims comes

into play. We have all -- as members of the Court, we have all the same obligations, whether it be the Bureau of the Prosecutor, or Article 68(1), or any other organ of the Court.

Thus we would like to submit to you some decisions that we would request from you. But there does exist a principle of the inherent jurisdiction of the Court in so far as, in the Rome Statute, one does not find this explicit provision with regard to the possibility of modifying the succinct presentation of facts. So there are different options. Whether it be Akayesu, Milosevic or others, there is case law where it was recognised under certain circumstances, in cases that were not necessarily identical to the present situation, but nevertheless in situations where it was indeed possible for us to recognise the inherent power of the Court to alter its orders or warrants.

Why?

MR THE PRESIDING JUDGE SLADE: I did not actually ask you about the powers of the Chamber to modify or amend, but do carry on.

MR MACDONALD (interpretation): But I presumed that this was perhaps a follow-on question, so I somewhat anticipated. So I will briefly summarise this: international law recognises the doctrine of inherent jurisdiction or

inherent power upon which a court may rely in order to seek powers that are not explicitly conferred by its statute.

The inherent jurisdiction is considered to be flexible in order to enable a court to fulfil its mandate when it is confronted with unpredictable or unforeseen situations. I submit to the Court that if 58(6) is limited to the charges, but if on the other hand you have an obligation on the basis of 58(3)(c) to include a succinct presentation of the facts, then it seems that in ancillary fashion, or in the alternative, you have the power to modify this warrant; because a warrant -- it should not be forgotten in the end -- is an order of the Court.

MR THE PRESIDING JUDGE SLADE: Thank you very much. I wanted it read into the record, because it is useful. But thank you very much. I wanted to focus very specifically on points that are covered in these questions.

Please explain why the Office of the Prosecutor is seeking the unsealing of the warrants, but to maintain the seal on the applications filed in May. Bear in mind: what will be obvious, of course, is that the warrants do contain a synopsis, if not a fairly significant synopsis, of the factual elements that are

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

being alleged. Please explain.

MS CHUNG: Mr President and your Honours, this is essentially analogous to the practice in the ICTY of unsealing entitlements but keeping the supporting materials confidential. And the statutory bases would be the same. There is no need -- there is certainly no obligation to disclose the underlying materials, which were very extensively summarised for the Chamber in the application.

So our view was that, though of course the presumption on the warrant is that it would be open when there is no other reason that justifies sealing, with respect to the application it is a different situation, where there is so much witness-related information in it, and there is no obligation to disclose it, that, consistent with the case law in the ICTY and the ICTR, the other ad hoc tribunals, we felt that the right practice was to maintain the confidentiality of the application.

That being said, I would emphasise to the Court that we are taking steps now to prepare for that, because certainly when someone is arrested it will be turned over. And at that point the experience in the tribunals I think has been that it is very, very difficult to control; at that point it gets disseminated to defence

counsel, other people who may be involved in the proceedings, and it becomes very difficult to control who has access to it.

So we are in the process of recommending the next set of witnesses who are highly identifiable from the warrant application -- as opposed to the warrant -- for re-location. It is not an extensive set of people, but there are some.

In addition, we have proposed redactions to the Court in the event that the application does become public. I think on further review -- and we had warned the Court that this might happen, just because of changed circumstances.

Looking at it now, fourth months after we initially proposed the redactions, we probably would want to redact some additional things. But our view at the current time was that: what is necessary is probably -- in terms of support, and what the Statute envisions -- unsealing of the warrant, but not the application.

MR THE PRESIDING JUDGE SLADE: All right. Thank you.

Now, you have anticipated a follow-up question on this one, Ms Chung. You speak of the possibility of further redactions, that is further to the redacted proposals placed before the Chamber in May. Is the Office of the Prosecutor now in a position to be

determinative? Do you know what these additional redactions are?

MS CHUNG: If the Chamber were to take the view that the warrant application should also be unsealed, we would have to have an assumption to work around. But if that was the assumption, yes, we could do that within a day or so. We had nearly completed another look at it.

As your Honour's last questions implied -- and maybe was apparent from the last set of redactions -- it takes bringing to bear everything that you know about every witness. Because something that is highly identifiable makes a piece of information -- even the same piece of information about one witness might make that person very identifiable; but the same information about a different witness would not. So there are these odd things like the fact that with (Redacted)

(Redacted)

(Redacted)

(Redacted)

So we have gone through and applied a certain logic the first time. Then, knowing what we know about the current security situation, and knowing more about our witnesses, we have gone through and proposed more protective redactions. But if it was of interest to the Chamber then we could submit that in a day's time, or

two days' time.

MR THE PRESIDING JUDGE SLADE: Perhaps you have covered this point already, but in the unsealing application, there is an indication that the OTP and the Victim and Witnesses Unit may have to take further witness protection measures in the field if the Chamber were to lift the seal on the applications for warrants. Have you spoken of these already? Or is this another matter that we could have a little bit of information on, please?

MS CHUNG: Your Honour, the consultations that we have had about VWU have been in this context of: okay, who might be the next ones to be relocated if it turned out that the warrant application were to become public. As an example, I can give you the victims (Redacted) (Redacted) (Redacted). There the issue is that there are (Redacted) (Redacted). We did not speak with all of them; (Redacted) (Redacted). It is very difficult to redact their stories entirely out of the warrant application without impairing the basis for the charge.

So it is true, you can always remove everything. But then the public will be left to wonder: where did

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

the charge come from? Now, that being said, I think it is like a constant balancing of how much redaction can be done; and then, if it is really not possible to redact everything, then you have to consider relocation. That is what happened with (Redacted) (Redacted): in fact the charge (Redacted) (Redacted), because (Redacted) (Redacted). So just the fact that the count exists exposes (Redacted), even if we redacted everything from the warrant application.

So with respect to the application, we left this a little while ago when we submitted the application on September 9th, so I would have to go back and look at it again. Our feeling was that there are probably a couple of close cases who we would carefully consider relocating. I do not think it would be more than (Redacted) (Redacted), but it is not something that could be accomplished overnight.

I should make clear: when we made the proposal for unsealing the other documents, we considered this: it is a laborious task to consider what to do with the entire rest of the record. Surprisingly we have a lot of record in this proceeding already. It was not our view necessarily that any of that had to be done concurrently with the unsealing of the warrant. That is why we made

the application separately. Certainly there will be public interest in what the other proceedings were once the warrants are unsealed. So I think there is sort of a pragmatic limitation maybe on how quickly the public may come asking: "What were the other proceedings in the case?"

But the application and the other documents like the hearing transcripts, the entire issue of Rule 176, we sort of considered that to be a separate application, maybe with a longer timeline than the application to unseal the warrants themselves; although naturally it would be the Court's prerogative to disagree with that.

MR THE PRESIDING JUDGE SLADE: Thank you. I, for one, found useful the schedule, the Annex A of the proposed redactions that you have kindly submitted to the Court. And we have been talking about a range of other redactions which you seek. Is the Office of the Prosecutor fairly satisfied that these are all the redactions that are required at this point?

MS CHUNG: Yes, your Honour. Mr President, with respect to the documents other than the arrest warrant application, we have been through them all. We tried to take it cautiously, because of course you can always keep something secret and unseal it later, but you cannot do it the other way round. So we tended to be protective.

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

It may be the reason we submitted it is that we were not sure if the Chamber would take the same approach or agree with that approach. But from our view those are the redactions that we would request; they remain the redactions we request.

I should inform your Honours that whenever we do that exercise, we do produce internally a redacted version. I am not sure that we submit it, but we would always have available, if the Chamber were to request it, a copy of what the document would look like in its redacted form.

MR THE PRESIDING JUDGE SLADE: Because there are things that one could regard as technical redactions. In every warrant -- indeed in every document there is a provision that this decision or this application remains under seal until otherwise ordered. These would be rather technical things. Are these to be redacted, for instance?

They all impact on the mechanical work that needs to be done, and I will shortly move to that line of questioning.

MS CHUNG: In terms of that mechanical step, Mr President and your Honours, we had actually proposed not to redact it, because we think in the end, in terms of the language of it being sealed, what happens then is that

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

it becomes confused in the record what exactly happened. It is usually -- at least the times that I have seen it, and in the experience of the ICTY cases I have seen, the order remains the same, the order of the decision remains the same. But then there should be an indication on it that it was unsealed. So it may mean a stamp on each page that says "Unsealed on such and such a day". But for the clarity of the record and so that the document is not altered too many times without a trail of what got altered, it is usually better for the document to remain, to continue to have the paragraph that it is sealed, but then there to be an indication on the face of the document itself that it was later unsealed.

Or, another way to look at it, is that the record of the different actions that were taken in a case will show that: yes, although in its original form, its July 8th form, it was sealed. The integrity of that document should be maintained, because in fact the July 8th document was sealed. But then, either through a stamp or some other indication -- and certainly the Court order will reflect a later order saying that it was unsealed. The trick is to have that later order somehow superimposed on the appearance of the earlier document.

Again, that is not to say that is the only way it could be done, but that was just the way we thought best preserved the integrity of the initial document while making it clear that the document later was unsealed.

MR THE PRESIDING JUDGE SLADE: All right. Not counting a number of documents -- the registration by the Registry, for instance, documentation, transcripts of the dialogue that the OTP and the Chamber had -- I myself had counted over 60 different documents, many very large in size. Do you have a programme? It is physically impossible if you insist on the 5th October deadline, if the decision of the Chamber were to unseal many of these documents.

Do you have in mind a programme of work? Are there priority documents, again, if this deadline is to be met, and if your application were to be granted?

MS CHUNG: Mr President and your Honours, I do not think it was -- and this is why we did not put the same deadline in that application -- I am not sure it was ever our view that it would have to be concurrent. I think that it could be, for example -- because it is, we have been through it as well, I know how laborious it is.

It could be, for example, that when the warrants are unsealed, if they are unsealed, that there be a notification to the public "Other portions of the

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

Court record will become public in due course or by another date." I do not think anybody would look at that at being bizarre or untoward. When I look at the ICTY case law there are many, many times when indictments were unsealed but there was nothing in that order itself about the unsealing of other court proceedings.

So while I think there would be public interest, I think one way to manage that might be to inform the public: "The schedule for releasing the other documents will be this schedule".

In terms of a priority of documents, I think the ones that probably there will be the greatest interest in, if I am looking at it from the public's right to know, or the public's interest in knowing, might be the legal issues that came up, the ones that are not so susceptible for redaction or necessary to redact: the Rule 176 issue.

There are some, like the Le Monde issue, we propose that be unsealed. We do not have strong feelings about that, however. I think the real issues that we feel are the core issues are the witness protection redactions and these discussions that we have had about consultations and co-operation. But other than that we did not really envision that it would happen

simultaneously, necessarily.

MR THE PRESIDING JUDGE SLADE: Then I need to ask you again, or rather more directly this time: what, if any, are the priority documents that the Office of the Prosecutor seeks to be redacted?

MS CHUNG: Your Honour, could I reach for my copy of the Annex, the index of the different documents? (Pause).

Mr President and your Honours, looking at the list, and just going in chronological order: the initial decisions of the Chamber to act as a full Chamber; the extension of the page limit, these are decisions of the Court; the decision to hold the hearing on the Rule 176 issue; the decision to hold the hearing on the production of victims and witnesses in connection with our application on the Le Monde issue; I think the transcripts are maybe of a lesser order; and then the decisions on the 176 issue moving forward and into the appeal.

The criteria that I am applying are: I do think there will be public interest and an interest on the part of the Court to let the public know that there were hearings in connection with the application; that the topic of witness and victim protection was addressed by the Court; that there were legal issues that came up that were addressed by the Court. So in my mind these

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

are probably a higher order to disclose than some of these other things.

MR THE PRESIDING JUDGE SLADE: And that was the purpose of the question about criteria or principles in the question to which Mr MacDonald had kindly responded.

Of the warrants of arrest, if the Chamber were to grant the application to unseal, are these the redactions that have been described: (Redacted) (Redacted) are these the only ones you need?

The Chamber needs to be totally satisfied that these are the only critical ones for the protection of these people. Please, Ms Chung.

MS CHUNG: Yes, Mr President, these are the only ones.

MR THE PRESIDING JUDGE SLADE: Thank you. Now, there is this matter of the deadline, the 5th October. I have asked if you had clear priorities, and you referred to a range of documents. I have no idea what the mechanical process is.

Certainly I can tell you this: the Chamber will need to be satisfied, and it will conduct its own proceedings to be satisfied of whatever it decides to unseal. And we envisage a fairly pressing programme to keep the sort of deadline that you seem to be insisting on.

Is this deadline a moveable deadline? Is it a dead

deadline? And why the significance of Wednesday 5th October and not Friday 7th or 8th October, please?

MS CHUNG: Mr President, the significance of the 5th October date is, partly as I have indicated, we had initially planned on the Wednesday before that; and then when this movement into DRC happened, the engagement happened -- we have to have a target date. Because the way the planning works, in terms of even the outreach, both there in Uganda, all the planning in Uganda: notifying the GOU, for example, (Redacted) has to be up and up that day, that we are expecting that that is their responsibility. So we picked a target date of a week out because that was what we could foresee at the time -- it was our best guess as to when we could do it the next window.

We are ready for that date, but obviously even coming here today I realise that it is very, very time-pressured. What we were hoping to do is, if there was authorisation from the Court even tomorrow -- to unseal the warrant only -- we would try to implement on Wednesday. Failing that, it would be the next day. So we will move the date. Part of it depends on the UNDSS notification and what can be done for UN staff that needs to be done; although, as I mentioned, some of that has already been adjusted upward because of the DRC

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

movement.

So we were going to accommodate ourselves that way, with the strong preference for having some advanced notification of the authorisation so that we could implement as soon as is possible, as soon as is practicable for the Court and for us.

We have never viewed the deadline to be applicable to the other documents. It may be that if the Chamber is inclined to do it all at one time, I can absolutely see why that would appear to be much more burdensome; it is much more burdensome.

I am just adjusting my mindset a little bit, because that is not the way we had been thinking about it. But if your Honours were to do that, one thing I could offer which may facilitate the Chamber's work is we do have the redacted versions, so we have proposed redacted versions which we would be more than happy to furnish the Chamber with. It at least helps visualise what the documents would look like and where the redactions are.

The one item that is separate is the application. Because of our request to keep the application for the warrants sealed, we had not really pursued -- and this is the first indication that I am getting that there might be disagreement, that the Court's ruling would be different. If so then obviously if we are asked to we

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

will submit a more redacted version along the lines of what I was proposing.

MR THE PRESIDING JUDGE SLADE: On the two-day notification, I think, that is required for the UN's Safety and Security Department, give us some indication: is it that already they have been notified of the existence of the warrant, and of the persons named in the warrant? And under these circumstances, is there still insistence on the two-day notification period?

MS CHUNG: Mr President, I can be pretty concrete about this, because we have talked to them a lot about this. They do not know that the warrants -- they are not necessary for the support of the warrants, so we did not really see them as being authorised within the scope of your Honour's prior ruling. We could give them this notification.

I can say what they are planning to do -- one thing they want to know about the warrants is who is named in them. Because they think the security situation will be worse if people who have already surrendered are named. We know in this room that nobody fitting that characteristic is named in the warrants. So the security elevation that they need to do, or the risk they are facing is not as high as in fact it is. They are a little bit concerned about who is going to be

named in the warrants.

So one thing we could do with the Chamber's authorisation is to let them know: in fact it will be limited to people who are still in the bush. It is nobody who is going to be arrested after they have surrendered and are now reintegrated in society.

The thing they are planning to do concretely: after the DRC movement of the LRA, they already are requiring their staff to call back to the homebase to get authorisation to move around in northern Uganda -- sorry, they are already advising their staff to do that, to call in on a trip-by-trip basis.

What they are planning to do in response to warrants -- because we have warned them that they may be imminent, although we have not told them they are coming -- what they are planning to do is just to make that mandatory. So it is not a huge security step, but it was one they had requested advance warning on.

That is why I think there is some flexibility. I am not sure that it will take them the full two days, because they have already adjusted a little bit to the DRC situation. But we have not told them the whole story yet, so I am not quite sure exactly what the reaction will be.

MR THE PRESIDING JUDGE SLADE: Thank you. Allow me a moment

to seek consultations with their Honours. (Pause).

Very well. Thank you. Their Honours have no supplemental questions to ask. We will of course need to take the matter away and it make our determination.

I would need to say, and I have the concurrence of my brethren to observe that, with respect to the United Nations Department of Safety and Security, in our view they seem to be covered in the decision that we had already rendered last week, and that gave you the authorisation to notify others, including an inter-governmental organisation, of the existence of the warrant, and the persons named in the warrants of arrest. So it seems to us that that need not be an additional problem while we turn to give the most serious consideration to your application, which of course we will do.

MS CHUNG: Thank you, Mr President.

MR THE PRESIDING JUDGE SLADE: All right.

There is a matter of the letter to Madam Bigombe, if you could see to the submission of that to the Registrar. We appreciate the additional information forthcoming from the Office of the Prosecutor, from the Registrar of the Court, and from the Victims and Witnesses Unit.

Madam Registrar, would you kindly adjourn this

Pursuant to Pre-Trial Chamber II's Order, ICC-02/04-01/15-245, dated 11-06-2015, this transcript with its redactions is reclassified as "Public"

status conference, please.

THE USHER: All rise.

The hearing is adjourned at 6.09 pm.

RECLASSIFICATION REPORT

Pursuant to Pre-Trial Chamber II's Order ICC-02/04-01/15-245, dated 11th June 2015, this transcript with its redactions is reclassified as "Public"