

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

No.: ICC-02/04

Date: 18 July 2005

Original: English

PRE-TRIAL CHAMBER II

Before: Judge Tuiloma Neroni Slade

Judge Mauro Politi

Judge Fatoumata Dembele Diarra

Registrar: Mr Bruno Cathala

SITUATION IN UGANDA

Under Seal

Ex Parte, Prosecutor Only

**DECISION ON THE PROSECUTOR'S MOTION FOR CLARIFICATION AND
URGENT REQUEST FOR VARIATION OF THE TIME-LIMIT ENSHRINED IN
RULE 155**

The Office of the Prosecutor

Mr Luis Moreno Ocampo, Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor

Ms Christine Chung, Senior Trial Lawyer

Mr Eric MacDonald, Trial Lawyer

PRE-TRIAL CHAMBER II (the “Chamber”) of the International Criminal Court (the “Court”), sitting as the full Chamber pursuant to its decision on the 18th day of May 2005, to which, on the 5th day of July 2004, the Presidency assigned the situation in Uganda pursuant to regulation 46 of the Regulations of the Court (the “Regulations”);

HAVING RECEIVED the “Prosecutor’s Motion for Clarification and Urgent Request for Variation of the Time-Limit Enshrined in Rule 155” dated the 14th day of July 2005 (the “Prosecutor’s motion”);

NOTING the Prosecutor’s request for clarification regarding certain issues dealt with by the Chamber in its “Decision On The Prosecutor’s Application For Warrants Of Arrest Under Article 58” (the “Decision”) and its requests for arrest and surrender (the “Requests”) dated the 8th day of July 2005; and noting also the Prosecutor’s request that the Chamber vary the time-limit to file any application for leave to appeal in connection with these issues;

NOTING that the Prosecutor’s motion requests the Chamber to decide on the issue of the variation of the time-limit before Monday the 18th day of July at 1:00 p.m., with a view to preserving the Prosecutor’s right to file an application for leave to appeal prior to the expiry of the relevant time-limit;

NOTING that a procedure for a motion for clarification is not provided for in the Statute of the Court (the “Statute”), the Rules of Procedure and Evidence (the “Rules”) or the Regulations;

CONSIDERING that the points raised for clarification in the Prosecutor's motion are clearly addressed in the Decision and in the Requests, and that therefore the Decision and the Requests do not present a degree of vagueness that, according to existing international criminal practice, would allow the Chamber to entertain a motion for clarification;

CONSIDERING it appropriate, as a response to the Prosecutor's motion and in the interests of the fair and expeditious conduct of the proceedings and the proper execution of the Decision and the Requests, that the Chamber confirms the determinations made in the Decision and in the Requests as they relate to the specific issues raised in the Prosecutor's motion;

NOTING paragraphs 5 to 8 of the Prosecutor's motion;

CONSIDERING that the terms of the Decision do not require "immediate transmission" of the Requests and the attached Warrants and do not provide reasons to treat the Decision as authorising the transmission of the Requests and the Warrants before the process of consultation and cooperation between the Registrar and the Prosecutor has taken place, or before the necessary and appropriate security scheme for victims and witnesses has been sufficiently and properly implemented;

CONSIDERING that the Chamber's instructions requiring the Registrar to act in full and close cooperation with the Prosecutor in matters concerning victim and witness protection are "without prejudice to the responsibilities of the Prosecutor under the Statute" and are specifically aimed at ensuring that a proper protection regime for victims and witnesses be put in place;

NOTING paragraphs 9 to 17 of the Prosecutor's motion;

NOTING the statements made by the Prosecutor during the hearings held on the 16th day of June 2005 and on the 21st day of June 2005 concerning, in particular, the cooperation between the Office of the Prosecutor and the Victims and Witnesses Unit, with a view to ensuring the proper implementation of the Prosecutor's overall plan for the security of victims and witnesses;

CONSIDERING it clear that the Decision does not impose and does not seek to impose any change to existing arrangements for cooperation between the Office of the Prosecutor and the Victims and Witnesses Unit, or in any way to intervene in the sharing of the necessary and respective tasks and responsibilities as agreed upon between them, but rather to ensure that consultation and cooperation be continued, with a view to achieving the paramount goal of ensuring security for victims and witnesses;

CONSIDERING that the Decision does not, by letter or implication, make the Registrar the "sole and exclusive organ for implementing security measures" "at this stage", or at any other stage; and that there is no basis for an assertion to the contrary, as claimed in the Prosecutor's motion;

CONSIDERING that the requirement for the Registrar to act in consultation and cooperation with the Prosecutor is also satisfied when the Victims and Witnesses Unit implements certain security measures itself and agrees that other measures be implemented by the Office of the Prosecutor;

NOTING paragraphs 18 to 22 of the Prosecutor's motion;

NOTING that in its Requests, the Chamber requested the Victims and Witnesses Unit, in accordance with regulation 41 of the Regulations, to draw any matter to the attention of the Chamber where protective or special measures under rules 87 and 88 of the Rules require consideration; and noting that the Chamber requested the Registrar to promptly refer to the Chamber any difficulty that may arise in the execution of the Requests;

CONSIDERING that these determinations also cover any matter or difficulty that may arise in connection with measures proposed by either the Registry or the Prosecutor to alter the form or content of Court documents in order to prevent the disclosure of the identity or whereabouts of victims and witnesses and members of their families;

RECALLING that the Chamber required the Registrar to act in accordance with articles 68 and 87, paragraph 4 of the Statute, when handling information relating to the Prosecutor's application, the Requests and subsequent proceedings and when taking any measures as may be necessary to ensure the safety or physical or psychological well-being of any victims, potential witnesses and members of their families;

CONFIRMING the authority which remains with the Chamber to review and authorise, where necessary, measures taken to redact or alter Court documents for the purposes of the protection of victims and witnesses prior to the transmission or dissemination of such documents; and confirming the authority of the Chamber to provide direction, should any difficulty concerning the

execution of the Decision or the Requests be brought to the attention of the Chamber by the Registrar or the Prosecutor;

NOTING paragraphs 23 to 27 of the Prosecutor's motion and his request for the Chamber to vary the time-limit prescribed in rule 155, sub-rule 1, of the Rules "for the purpose of filing any application for leave to appeal in relation to the issues upon which clarification is sought", and the reasons submitted in support of the request;

CONSIDERING that neither rule 155, sub-rule 1, of the Rules, nor any other provision of the Statute, the Rules or the Regulations vests the Chamber with discretion to vary the time-limit established in the above rule;

CONSIDERING that the time-limit set by rule 155, sub-rule 1, of the Rules serves a specific purpose, namely to allow a party making an application to set out concisely the reasons in support of leave to appeal, while leaving scope for that party to elaborate the reasons in support of the appeal within ten days of the notification of a decision granting leave to appeal, pursuant to regulation 65, sub-regulation 4, of the Regulations;

NOTING that the Prosecutor invokes rule 101, sub-rule 1, of the Rules as the basis of his request for variation;

CONSIDERING that rule 101, sub-rule 1 of the Rules, concerns the criteria for time-limits to be set by order of the Court, and cannot be interpreted as conferring upon the Chamber any specific power to vary the time-limits set forth in the Statute or the Rules;

NOTING that, as acknowledged in the Prosecutor's motion, the variation of time-limits under regulation 35 of the Regulations applies only in respect of time-limits prescribed in the Regulations or ordered by a Chamber;

CONSIDERING that allowing for a variation of a time-limit set forth under the Rules, in particular a time-limit in respect of an appeal, on the basis of a party's alleged need to seek "clarification" on the contents of a decision, would in substance render the stipulated time-limit ineffective; and that doing so would involve procedural uncertainty and thus be contrary to the objective of ensuring fair and expeditious proceedings;

CONSIDERING furthermore that the terms of the Decision and the Requests as confirmed by this decision of the Chamber are sufficiently clear to be implemented by the Prosecutor, in mutual coordination and consultation with the Registrar, without prejudice to the Prosecutor's responsibilities under the Statute, and without prejudice to any application the Prosecutor may choose to file pursuant to article 82 of the Statute or rule 155 of the Rules;

FOR THESE REASONS, PRE-TRIAL CHAMBER II HEREBY:

CONFIRMS the Chamber's determinations as stated above with respect to the issues for which clarification is sought in the Prosecutor's motion;

REJECTS the Prosecutor's motion with respect to the assertion that the "content and scope" of the Decision and the Requests are not "entirely clear";

REJECTS the Prosecutor's request for a variation of the time-limit prescribed in Rule 155 of the Rules for filing an application for leave to appeal;

DECIDES to authorise the disclosure of the Prosecutor's motion and this decision to the Registrar;

DECIDES that this decision be otherwise kept under seal until further order by the Chamber.

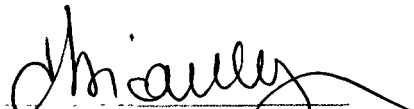
Done in both English and French, the English version being authoritative



Judge Tuiloma Neroni Slade
Presiding Judge



Judge Mauro Politi



Judge Fatoumata Dembele Diarra

Dated this 18th day of July 2005

At The Hague, The Netherlands

Seal of the Court