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Pénale
Internationale**



**International
Criminal
Court**

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No.: **ICC-02/04-01/05**
Date: **8 December 2006**

PRE-TRIAL CHAMBER II

Before: Judge Mauro Politi, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Ekaterina Trendafilova

Registrar: Mr Bruno Cathala

**SITUATION IN UGANDA
IN THE CASE OF
THE PROSECUTOR
*vs. JOSEPH KONY, VINCENT OTTI, RASKA LUKWIYA, OKOT
ODHIAMBO and DOMINIC ONGWEN***

Public Document
**SUBMISSION OF ADDITIONAL INFORMATION ON THE STATUS OF
THE EXECUTION OF THE WARRANTS OF ARREST IN THE
SITUATION IN UGANDA**

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Ms Christine Chung, Senior Trial Lawyer

Preliminary Statement

The Office of the Prosecutor (“OTP”) respectfully submits additional information on the status of the execution of the warrants of arrest in the situation in Uganda, in response to an Order of this Chamber dated 30 November 2006. This document serves as an update to the OTP’s prior submission, dated 6 October 2006.

Procedural Background

1. On 8 July 2005, this Chamber issued warrants of arrest, under seal, naming Joseph KONY, Vincent OTTI, Raska LUKWIYA, Okot ODHIAMBO, and Dominic ONGWEN, and charging these alleged LRA leaders with crimes against humanity and war crimes.¹

2. On 27 September 2005, following an urgent application by the OTP, the Chamber ordered that the Registrar transmit, under seal, Requests for Arrest and Surrender to the Governments of Uganda, the DRC, and the Sudan.² Annexed to these Requests for Arrest and Surrender, and also transmitted confidentially, were the warrants issued on 8 July 2005 for OTTI, LUKWIYA, ODHIAMBO, and ONGWEN, and an amended warrant of arrest naming KONY.³

¹ See “Decision on the Prosecutor’s Application for Warrants of Arrest under Article 58,” ICC-02/04-01/05-1, 8 July 2005; “Warrant of Arrest for Joseph Kony,” ICC-02/04-01/05-2-US-Exp, 8 July 2005; “Warrant of Arrest for Vincent Otti,” ICC-02/04-01/05-4-US-Exp, 8 July 2005; “Warrant of Arrest for Raska Lukwiya,” ICC-02/04-01/05-6-US-Exp, 8 July 2005; “Warrant of Arrest for Okot Odhiambo,” ICC-02/04-01/05-8-US-Exp, 8 July 2005; “Warrant of Arrest for Dominic Ongwen,” ICC-02/04-01/05-10-US-Exp, 8 July 2005. Also on 8 July 2005, the Chamber issued corresponding Requests for Arrest and Surrender addressed solely to Uganda. See ICC-02/04-01/05-12-US-Exp to ICC-02/04-01/05-16-US-Exp, 8 July 2005.

² See “Decision on the Prosecutor’s Urgent Application,” 26 September 2005, ICC-02/04-01/05-27, 27 September 2005 (hereinafter “27 September 2005 Decision”). For the Requests for Arrest and Surrender addressed to the DRC, see ICC-02/04-01/05-30-US-Exp to ICC-02/04-01/05-34-US-Exp, 27 September 2005. For the Requests for Arrest and Surrender addressed to the Sudan, see ICC-02/04-01/05-35-US-Exp to ICC-02/04-01/05-39-US-Exp, 27 September 2005. The warrant naming Joseph Kony and the Request for Arrest and Surrender naming Kony addressed to the Government of Uganda were amended, also on 27 September 2005, at the request of the OTP. See 27 September 2005 Decision, p. 5.

³ See *id.*

3. On 13 October 2005, the Chamber ordered the unsealing of the warrants and the Requests for Arrest and Surrender.⁴
4. On 15 September 2006, this Chamber issued the “Order to the Registrar and the Prosecutor for the Submission of Information on the Status of the Execution of the Warrants of Arrest in the Situation in Uganda.”⁵ In this Order, the Chamber stated that there was a need “to receive a complete update on the status of the execution of the Warrants and of the Requests and of the ongoing cooperation with the relevant States”⁶ The Chamber directed the OTP to submit by 6 October 2006 “information and comments in writing upon the status of cooperation with the relevant States and with the Registry as regards the execution of the warrants.”⁷
5. The Registry sought, on 26 September 2006, updates from the Governments of Uganda, the DRC, and the Sudan on the status of warrant execution.⁸
6. On 6 October 2006, the OTP filed its “Submission of Information on the Status of the Execution of the Warrants of Arrest in the Situation in Uganda.”⁹ On the same date, the Registry filed the “Rapport du greffier sur l’état d’exécution des mandats d’arrêt dans la situation en Ouganda.”¹⁰ Attached as Annex 2 to the Registry’s filing was a letter, dated 4 October 2006, and submitted by the Government of Uganda to the Registry in response to the Registry’s request for an update on the status of warrant execution.

⁴ See “Decision on the Prosecutor’s Application for Unsealing of the Warrants of Arrest,” ICC-02/04-01/05-52, 13 October 2005, pp. 7-8.

⁵ See ICC-02/04-01/05-111, 15 September 2006 (hereinafter “15 September 2006 Order”).

⁶ See *id.*, p. 5.

⁷ See *id.*, p. 6.

⁸ See “Rapport du greffier sur l’état d’exécution des mandats d’arrêt dans la situation en Ouganda,” ICC-02/04-01/05-118, 6 October 2006, p. 6.

⁹ See ICC-02/04-01/05-116Corr2, 6 October 2006 (hereinafter “6 October 2006 Submission”).

¹⁰ See ICC-02/04-01/05-118, 6 October 2006 (hereinafter “6 October 2006 Registry Report”).

7. On 20 October 2006, the Registry filed a “Rapport complémentaire du greffier sur l’état d’exécution des mandats d’arrêt dans la situation en Ouganda.”¹¹ Annexed to that report was a letter, dated 13 October 2006, and submitted by the Government of the Democratic Republic of Congo to the Registry’s request for an update on the status of warrant execution.
8. On 30 November 2006, this Chamber issued the “Order to the Prosecutor for the Submission of Additional Information on the Status of the Execution of the Warrants of Arrest in the Situation in Uganda.”¹² In this Order, the Chamber requested the OTP to provide additional information in response to four questions.¹³ The OTP respectfully submits this application in response.

**Additional Information on the Status of the Warrants of Arrest
in the Situation in Uganda**

9. For the purpose of updating the information previously provided, the OTP notes the following events which have occurred since the 6 October 2006 Submissions of the OTP and the Registry:
- On 1 November 2006, the Lord’s Resistance Army (“LRA”) and Government of Uganda extended the terms of the ongoing ceasefire by signing an addendum to the Cessation of Hostilities Agreement.¹⁴
 - On 12 November 2006, Jan Egeland, United Nations Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, met with Joseph KONY and Vincent OTTI in the Sudan, near the Sudan-DRC

¹¹ See ICC-02/04-01/05-122, 20 October 2006 (hereinafter “20 October 2006 Registry Report”).

¹² See ICC-02/04-01/05-131, 30 November 2006 (hereinafter “30 November 2006 Order”).

¹³ See *id.*, pp. 4-5.

¹⁴ See “*The new LRA-Uganda truce,*” New Vision, 2 November 2006 (<http://www.newvision.co.ug/D/8/459/530045>) and “*Security Council Presidential Statement Demands Release of Women, Children by Lord’s Resistance Army, Expeditious Conclusion of Peace Process,*” SC/8869, p. 1 (<http://www.un.org/News/Press/docs/2006/sc8869.doc.htm>).

border, in an attempt to gain the release of abductees and to encourage the LRA to pursue negotiations to end the conflict. The attempt to win an immediate release of abductees was ultimately unsuccessful. In a press release issued by the UN Office for the Coordination of Humanitarian Affairs (hereinafter “UN OCHA”) following the meeting, Mr. Egeland assessed that a failure to resolve the conflict “may have catastrophic consequences – not only in Northern Uganda, but also in Southern Sudan, the Democratic Republic of the Congo and the Central African Republic – for local communities.”¹⁵ The press release stated that during the meeting, KONY had raised the issue of the ICC, but that Mr. Egeland had “reiterated that he would not speak on behalf of the ICC, which is an independent organization.”¹⁶

- In the week of 13 November 2006, the LRA High Command met with a delegation that included officials from northern Uganda and Ugandan lawyers, in the area of Garamba Park in the DRC. According to public reports from members of that group, the delegation impressed upon the LRA High Command, including KONY, that the named individuals should not expect that the warrants of arrest would be withdrawn. It was also stated to the High Command, including KONY, that the President of Uganda does not have “the power to avert the hand of the ICC,”¹⁷ that an attempt to resist the warrants through political means would likely fail and that the LRA leadership should consider agreeing to a process of accountability.¹⁸

¹⁵ See “UN Humanitarian Chief Meets with LRA Leadership,” *UN OCHA*, 13 November 2006, (<http://ochaonline.un.org/webpage.asp?Page=2229>).

¹⁶ See *id.*

¹⁷ See “Kony, Oti study ICC rules,” *New Vision*, 20 November 2006 (<http://www.newvision.co.ug/PA/8/12/533355>).

¹⁸ See *id.*

- On 16 November 2006, the United Nations Security Council issued a Presidential Statement in which it demanded that the LRA release all women, children, and other non-combatants, and that the peace process be concluded expeditiously.¹⁹ The Presidential Statement also invited “United Nations Member States to support efforts to bring an end to this conflict, . . . and to ensure that those responsible for serious violations of human rights and international humanitarian law are brought to justice.”²⁰
- On 23 November 2006, the Prosecutor addressed the Assembly of States Parties in The Hague on developments concerning the Uganda situation. He noted at that time that, “Securing the arrest of the four remaining LRA commanders would prevent recurrent violence and provide justice to the victims.”²¹ On the same day, Ambassador Mirjam Blaak delivered an address on behalf of the Government of Uganda.²² In that address, Ambassador Blaak re-emphasized the commitment of the Government of Uganda, stated among other places in its 4 October 2006 Letter to the Registry, to seeking “a permanent solution to the violence that serves the need for peace and justice, compatible with our obligations under the Rome Statute.”²³ Ambassador Blaak described ongoing discussions among working groups within the Assembly of States Parties regarding aspects of state cooperation, including support for execution of the warrants of arrest, and noted the likely ability of some of the participating States Parties to render practical support.²⁴

¹⁹ See “Security Council Presidential Statement Demands Release of Women, Children by Lord’s Resistance Army, Expedious Conclusion of Peace Process,” SC/8869, p. 2 (<http://www.un.org/News/Press/docs/2006/sc8869.doc.htm>).

²⁰ See *id.*, p. 2.

²¹ See “Opening Remarks, Fifth Session of the Assembly of States Parties, Luis Moreno-Ocampo Prosecutor of the International Criminal Court,” 23 November 2006, p. 3 (http://www.icc-cpi.int/library/organs/otp/LMO_20061123_en.pdf).

²² See “International Criminal Court, Fifth Session of the Assembly of States Parties, the Hague, 23 November 2006, Statement made on behalf of Uganda by Ambassador Mirjam Blaak Head of Delegation,” (Annex A).

²³ See *id.*, p. 4.

²⁴ See *id.*, p. 4.

Ambassador Blaak confirmed that the LRA leadership had been encouraged in meetings with attorneys to sign a comprehensive peace agreement which included accountability rather than negating personal responsibility.²⁵

- It is currently expected, despite public reports last week that the LRA High Command suspended the talks, that negotiations will resume. Observance of the cease-fire appears to be continuing, although the LRA have not gathered in the assembly areas as required under the Cessation of Hostilities Agreement.²⁶

At this time, Joseph KONY, Vincent OTTI, and Okot ODHIAMBO are believed to be in the Democratic Republic of Congo. Dominic ONGWEN is believed to be in Southeast Equatoria, in the Sudan. Although the general whereabouts of the LRA commanders are known, their apprehension, with the safeguard and safe release of the women and children held with the LRA, remains a significant operational challenge for the territorial countries involved and to the international community as a whole.²⁷

10. With respect to the questions specified in the 30 November 2006 Order, the OTP responds as follows. For ease of reference, the question is reproduced.
11. Question 1. *Whether and to what extent the “regular updates” submitted by the governments of Uganda, the Democratic Republic of Congo (DRC) and Sudan to the Office of the Prosecutor (OTP) and their statements concerning the continued “commitment to executing the warrants of arrest” are supported by*

²⁵ See *id.*, p. 3.

²⁶ See “LRA Walks Out of Juba Peace Talks Yet Again,” *The East African*, 5 December 2006 (<http://www.nationmedia.com/estafrican/current/News/News0412064.htm>).

²⁷ See “*International Criminal Court, Fifth Session of the Assembly of States Parties, the Hague, 23 November 2006, Statement made on behalf of Uganda by Ambassador Mirjam Blaak Head of Delegation,*” (Annex A), p. 2.

concrete action to that effect and reflect their genuine willingness to cooperate regarding the execution of the Warrants.

Answer: The OTP receives updates relating to concrete action and planning on the part of relevant States and organisations concerning the execution of the arrest warrants, subject to limits of operational and national security. The OTP is not directly involved in operational planning concerning arrests, this being the responsibility of the territorial States²⁸ The OTP does not possess information that would cast doubt as to the genuine nature of any State's willingness to cooperate in executing the warrants of arrest. As the previous OTP filing sets forth, each of the entities which are potentially in a position to support execution of the warrants of arrest labours under mandates which include the enforcement of the Rome Statute, as well as other important responsibilities, such as, to achieve peace and security and improve the humanitarian situation for the victims. The OTP does not equate the simultaneous pursuit of important obligations other than that of effectuating the arrest warrants with unwillingness to effectuate those warrants. The UN Under-Secretary for Humanitarian Affairs, for example, met with the LRA High Command in an attempt to further the humanitarian objective of obtaining the release of LRA abductees, including women and children. The UN Under-Secretary informed the Prosecutor in advance of his intention to hold this meeting, and during the meeting advanced the humanitarian objective while refraining from making any comment on behalf of the ICC. Similarly, the Government of Uganda, clarified in its 4 October 2006 letter to the Registry that, "In the interests of peace and security for the civilian population, who are at risk of being victimised by the LRA, the Government of Uganda is currently participating in peace talks, facilitated by the Government of

²⁸ As the letter, dated 4 October 2006, from the Government of Uganda suggested, there is obviously a limit to the operational detail which Governments will share with the ICC, because of reasons of national security. *See* p. 2 of "Report from the Registry of 6 October 2006" - ICC-02/04-01/05-118-Anx2.

Southern Sudan.”²⁹ The Government of Uganda simultaneously, however, has reaffirmed its commitment to satisfying its obligations under the Rome Statute and obtaining “a permanent end to the violence that serves the need for peace and justice, compatible with those obligations.”³⁰

During contacts between the OTP and other entities participating in or supporting the peace negotiations, these entities have stated their continuing commitment to genuine efforts to ensure that any negotiated peace does not come at the price of impunity. These entities also continue to explore means of promoting peace and accountability in the event the current peace negotiations do not bear fruit.

12. Question 2: *Whether and to what extent the peace negotiations and recent events in the region have affected the level of cooperation by the relevant governments.*

Answer: The peace negotiations continue in parallel to other forms of cooperation. For example, the Government of Uganda continues to provide the OTP with the required cooperation in relation to on-going investigations. Efforts continue between relevant States and the UN to address issues of operational coordination. In addition, Mozambican President Joaquim Chissano has recently been appointed as the Special Envoy of the UN Secretary General for LRA affected areas. This appointment is another step towards improving the coordination of efforts concerning the LRA.³¹

The OTP has found it critical in promoting and maintaining cooperation that the OTP shares information about ICC procedures, as they relate to the case, with

²⁹ See *id.*, p. 2.

³⁰ See *id.*, p. 2.

³¹ See “Annan names Special Envoy to help resolve northern Ugandan conflict,” UN News Service, 4 December 2006 (<http://www.un.org/apps/news/story.asp?NewsID=20835&Cr=LRA&Cr1=#>).

relevant States and UN entities. In turn, it has appreciated information sharing by the States and relevant UN entities. This sharing of information and coordination has promoted respect for the mandates of the different entities and institutions involved.

13. Question 3: *Whether, in the course of the “missions” by the OTP to Uganda, the DRC and Sudan and “other concerned states,” and the respective “meetings” with government officials, or in other contexts, the OTP received more concrete information on:*

- *specific initiatives of the relevant governments to execute the Warrants, including requests for assistance addressed to MONUC;*
- *the “difficulties” and “operational challenge” encountered by the respective governments in the execution of the Warrants.*

In the affirmative, how would the Prosecutor assess and evaluate such information with respect to the execution of the Warrants.

Answer: As previously indicated, the OTP receives regular updates from relevant States and organisations on initiatives and challenges concerning the execution of the warrants, within the confines of operational and national security. The DRC, in which three of the named individuals are currently located, over a year ago, requested the aid of MONUC in executing the warrants of arrest. The OTP continues to receive reports of good-faith efforts to execute the warrants of arrest, although the operational and coordination challenges remain significant. With respect to MONUC, the safe conduct of the DRC Presidential elections, the first democratic elections to be held in the DRC in the last 40 years, has understandably been the highest priority for MONUC in the past months.

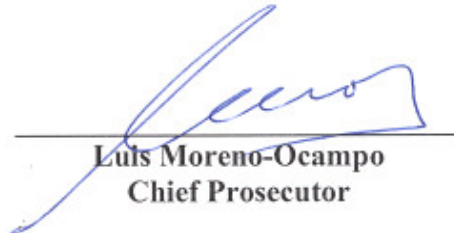
14. Question 4: *Whether the Prosecutor, in light of recent events and reported meetings of UN officials with Joseph KONY, has requested or intends to request cooperation from the UN for the purpose of supporting the execution of the Warrants.*

Answer: As is stated above, the UN Under-Secretary-General informed the Prosecutor of his intention to meet with the LRA High Command, before the meeting occurred, and Mr. Egeland and the Prosecutor remain in regular contact. Also, as was described in the OTP's last submission, the UN and the UN Security Council are active in matters relating to the LRA in which UN cooperation might be relevant and important. In October 2005, the DRC formally requested the aid of MONUC in executing the warrants of arrest. This is consistent with, Art. 16 of the memorandum of understanding between the ICC and MONUC, which does not envisage the OTP directly requesting the aid of MONUC in supporting arrest efforts, but instead, views the territorial State to be the party with the obligation to request support in aid of execution of warrants of arrest.³² The OTP is in contact with relevant UN actors such as UN Department of Peacekeeping Operations (hereinafter "DPKO"), and the latest in a series of regular meetings between the Prosecutor and the head of DPKO took place in October 2006. The OTP has raised in these meetings with DPKO the need to galvanize national, regional and international efforts in support of arrest and surrender.

³² In conformity with Part 9 of the Rome Statute, Art. 89(1).

Conclusion

The OTP respectfully submits this additional information on the status of the execution of the warrants of arrest in the situation in Uganda.



Luis Moreno-Ocampo
Chief Prosecutor

Dated this 8th day of December 2006
At The Hague, The Netherlands

List of Cited Authorities

I. UN DOCUMENTS

1. Press Release UN, *Security Council Presidential Statement Demands Release of Women, Children by Lord's Resistance Army, Expeditious Conclusion of Peace Process*, SC/8869 5566th meeting, 16 November 2006, available at: <http://www.un.org/News/Press/docs/2006/sc8869.doc.htm> (Last visited 6 December 2006).
2. Press Release OCHA, *UN Humanitarian Chief meets with LRA Leadership*, 13 November 2006, available at: <http://ochaonline.un.org/webpage.asp?Page=2229> (Last visited 7 December 2006).

II. ONLINE NEWS ARTICLES

3. *The new LRA-Uganda truce*, New Vision, 2 November 2006, available at <http://www.newvision.co.ug/D/8/459/530045> (Last visited 8 December 2006).
4. *Kony, Otti study ICC rules*, New Vision, 20 November 2006, available at: <http://www.newvision.co.ug/PA/8/12/533355> (Last visited 7 December 2006).
5. *LRA Walks Out of Juba Peace Talks Yet Again*, The East African, 5 December 2006, available at: <http://www.nationmedia.com/eastafrican/current/News/News0412064.htm> (Last visited 7 December 2006).
6. *Annan names Special Envoy to help resolve northern Ugandan conflict*, UN News Service, 4 December 2006, available at: <http://www.un.org/apps/news/story.asp?NewsID=20835&Cr=LRA&Cr1=#> (Last visited 7 December 2006).

III. OTHERS

7. *Opening Remarks by the Chief Prosecutor of the International Criminal Court L. Moreno-Ocampo, Fifth Session of the Assembly of States Parties, The Hague*, 23 November 2006, available at http://www.icc-cpi.int/library/organs/otp/LMO_20061123_en.pdf (Last visited 6 December 2006).
8. *International Criminal Court, Fifth Session of the Assembly of States Parties, the Hague, 23 November 2006, Statement made on behalf of Uganda by Ambassador Mirjam Blaak Head of Delegation*, 23 November 2006, Annex A.