

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/04-01/05
Date: 7 November 2008

PRE-TRIAL CHAMBER II

Before: Judge Mauro Politi, Presiding Judge
Judge Hans-Peter Kaul
Judge Ekaterina Trendafilova

**SITUATION UGANDA
IN THE CASE OF
THE PROSECUTOR
v. JOSEPH KONY, VINCENT OTTI, OKOT ODHIAMBO & DOMINIC ONGWEN**

**Confidential
Ex parte, Prosecution Only
Proposal for Redaction of Documents Requested by the Defence
Pursuant to the Order of 31 October 2008**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

***Unrepresented Applicants for
Participation/Reparation***

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar
Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Background

1. On 31 October 2008, Pre-Trial Chamber II rendered its "*Decision on Defence Counsel's "Request for conditional stay of proceedings"*"¹ rejecting the Defence request and extending the deadline for the submission of all participants' observations on the question of admissibility.²
2. Pre-Trial Chamber II ordered the Prosecution, *inter alia*, to file a confidential *ex parte* document setting out final proposals for the redaction of transcripts of the June 2005 and October 2005 court hearings in the situation and other documents requested by counsel for the Defence at paragraph 27(2) of his filing entitled "*Request for conditional stay of proceedings*" (the "Defence Request").³

Submission

3. The Prosecution refers the Pre-Trial Chamber to its previous filings entitled "*Prosecutor's Submission of Information on Further Unsealing of Documents of the Record*"⁴ and "*Prosecution's Submission of Proposals for the Treatment of Documents Listed in Annex I of the Order of the Single Judge Dated 19 March 2008*"⁵ (the "Previous Proposed Redactions") which reflect all proposed redactions and modifications to the documents requested by the Defence as of the date of the present proceedings.
4. The Prosecution stresses that it has not identified any information subject to the Previous Proposed Redactions which, in its opinion, would be of present

¹ ICC-02/04-01/05-328.

² ICC-02/04-01/05-320; Decision initiating proceedings under Article 19, requesting observations and appointing counsel for the Defence.

³ ICC-02/04-01/05-325, 28 October 2008.

⁴ ICC-02/04-01/05-83, 2 May 2006.

⁵ ICC-02/04-137-US-Exp, 6 May 2008.

assistance to the Defence in preparing its submissions on the issue of admissibility. Where the Prosecution has identified redactions which may now be lifted, such lifting has been engendered by a change in circumstances related inter alia to the passage of time.

5. Accordingly, the Prosecution sets out below its observations with respect to each of the documents set out in Paragraph 27(2) of the Defence Request:

(i) Prosecutor's Submission of Proposed Forms of Warrants of Arrest and Notification of Amendment to Application for Warrants of Arrest Under Article 58, 13 May 2005;⁶

The Prosecution consents to the disclosure of this document subject to Paragraph 6 below.

(ii) Prosecutor's Proposed Redacted Version of Amended Application for Warrants of Arrest Under Article 58, 18 May 2005;⁷

On 13 May 2005, the Prosecution had indicated that it would file a redacted version of the Amended Application for Warrants of Arrests in the event that the Application itself had to be transmitted to a State or States pursuant to Art. 91(2)(c) of the Statute.⁸ To this end, the proposed redacted version of the Amended Application was filed on 18 May 2005.

Since the issue to be addressed by *ad hoc* counsel in the present proceedings is limited to the question of admissibility, as defined by the Chamber⁹, the Prosecution respectfully submits that further redaction is

⁶ ICC-02/04-5-US-Exp.

⁷ ICC-02/04-9-US-Exp.

⁸ ICC-02/04-5-US-Exp, para. 6.

⁹ ICC-02/04-01/05-320.

required to the factual details of the attacks in order to protect the identity of victims and witnesses and, in addition, particulars that may lead to the identification of information providers and sources. For this purpose, the Prosecution submits, as Annex A, the previous redacted version of the amended application for warrants of arrest with further redactions necessitated by the present admissibility proceedings highlighted in yellow.

The Prosecution also requests that the following annexes of the redacted version remain under seal:

Annexes Q22 – Q32 inclusive to Prosecutor's Amended Application for Warrants of Arrest Under Article 58 – which comprise photographs of injuries and may lead to victim identification;

Annexes T1 – T4 inclusive which comprise photographs of injuries and may lead to victim identification.

Annex W1 which comprises a photograph of an injured victim and may lead to his identification.

(iii) Prosecutor's Amended Application for Warrants of Arrest Under Article 58, 18 May 2005;¹⁰

The Prosecution refers Pre-Trial Chamber II to its submissions in paragraph 5(ii) hereinabove. Only the redacted version of the Amended Application for Warrants of Arrest should be disclosed to *ad hoc* counsel.

¹⁰ ICC-02/04-8-US-Exp.

- (iv) **Decision of the Chamber to hold a hearing on the protection of victims and witnesses in connection with the Prosecutor's application for warrants of arrest and the Prosecutor's application, 13 June 2005;**¹¹

The Prosecution submits that the disclosure of this document is moot since it has been unsealed pursuant to Decision ICC-02/04-01/05-78.

- (v) **Transcript of the hearing held 16 June 2005;**

The Prosecution consents to the disclosure of the transcript of the hearing subject to the Previous Proposed Redactions of which the following one redaction may now be lifted:

Page 94, Line 25: *"coordination issues....taskforce together"*.¹²

The Prosecution proposes the following redaction which was not included among the Previous Proposed Redactions:

Page 59, Lines 11-18: *"Secondly, as we discussed ... Court in the warrants"*.

The Prosecution submits the above redaction because the content of the relevant passage refers to a status conference held on 8 February 2005, the transcript of which is still under seal.¹³ This proposal would ensure consistency with other Previously Proposed Redactions.

For the convenience of the Pre-Trial Chamber, the Prosecution submits, as Annex B, a copy of the 16 June 2005 transcript in "strike-through"

¹¹ ICC-02/04-13-US-Exp.

¹² ICC-02/04-01/05-83-US-Exp-Anx A page 20.

¹³ ICC-02/04-T-1-CONF-EN.

format since such a version was not submitted at the time of the filing of the Previous Proposed Redactions.¹⁴

(vi) Transcript of the hearing held 21 June 2005;

The Prosecution consents to the disclosure of the transcript of the hearing subject to the Previous Proposed Redactions of which the following one redaction may now be lifted:

Page 129, Lines 15-18: *"Is the LRA now attacking...are they operating?"*¹⁵

(vii) Prosecutor's Application for Unsealing of Warrants of Arrest Issued on 8 July 2005, and Other Related Relief, 9 September 2005;¹⁶

The Prosecution consents to the disclosure of this document subject to the Previous Proposed Redactions.

(viii) Status Conference held in closed session on 3 October 2005, including the transcript of the status conference held on 3 October 2005;

The Prosecution consents to the disclosure of the transcript of the status conference subject to the Previous Proposed Redactions of which the following two redactions may now be lifted:

Page 10, Line 23 to Page 11 Line 1: *"They are operating ...not as easily detected and caught"*¹⁷

¹⁴ The Prosecution had, however, provided a chart detailing the proposed redactions and the legal basis for their proposal; See *supra*, ICC-02/04-01/05-83-US-Exp-Anx A .

¹⁵ ICC-02/04-01/05-83-US-Exp-Anx A page 21.

¹⁶ ICC-02/04-01/05-21-US-Exp

¹⁷ ICC-02/04-01/05-83-US-Exp-Anx A page 24.

Page 11, Line 20 – 23: “what happens if LRA...security scenario”.¹⁸

- (ix) Status Conference held in closed session on 6 October 2005, including the transcript of the status conference held on 6 October 2005;**

The Prosecution consents to the disclosure of the transcript of the status conference subject to the Previous Proposed Redactions.

- (x) Transcript of the hearing of the 13 January 2006 concerning the investigation in the Situation in Uganda in relation to the application of Article 53 (as referred to in ICC-02/04-01/05-72);**

The Prosecution consents to the disclosure of this document to the Defence and maintains its previous stated recommendation that the transcript be unsealed in un-redacted form.

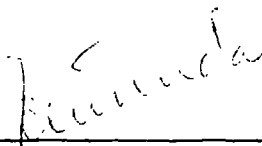
The Locations of the Attacks

6. The Prosecution recalls that Pre-Trial Chamber II unsealed the Warrants of Arrests, while redacting the locations of the Lord's Resistance Army attacks that form the factual basis of this case. The Prosecution, nevertheless, respectfully reiterates its proposal that the names of these locations be disclosed to the Defence, *inter alia*, to allow effective preparation for the present admissibility proceedings. To this end, the locations referred to in the documents detailed in Paragraphs 5(i), 5(ii) and 5(iii) above remain un-redacted. For the sake of consistency, the same should apply to the transcripts identified above.

¹⁸ *ibid.*

Conclusion

7. The Prosecution requests that Pre-Trial Chamber II order the disclosure of the documents detailed in the Defence Request subject to the above proposed redactions. The Prosecution stresses its willingness to clarify the content of this filing in an *ex parte* hearing should the need arise.



Fatou Bensouda, Deputy Prosecutor
on behalf of
Louis Moreno-Ocampo, Prosecutor

Dated this 7th day of November 2008

At The Hague, The Netherlands