

**Cour
Pénale
Internationale**

**International
Criminal
Court**

No.: ICC-02/04

Date: 8 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

WARRANT OF ARREST FOR DOMINIC ONGWEN

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

1. **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");

2. **HAVING RECEIVED** the "Prosecutor's application for Warrants of Arrest under Article 58" dated the 6th day of May 2005, as amended and supplemented by the Prosecutor on the 13th day of May 2005 and on the 18th day of May 2005 (the "Prosecutor's application"), and having considered it on the basis of the amended application of the 18th day of May 2005;

3. **NOTING** the Prosecutor's request to be authorised to exceed the 50-page limit for his application for the issuance of warrants of arrest and the Chamber's decision on the 18th day of May 2005 granting the request;

4. **NOTING** that the Prosecutor's application seeks a warrant of arrest for **DOMINIC ONGWEN** for the crimes listed under Counts 27 to 33, as set out in the Prosecutor's application, as well as warrants of arrest for four other persons named in the Prosecutor's application;

The Lord's Resistance Army (the "LRA")

5. **CONSIDERING** the general allegations presented in the Prosecutor's application that the LRA is an armed group carrying out an insurgency against the Government of Uganda and the Ugandan Army (also known as

the Uganda People's Defence Force ("UPDF")) and local defence units ("LDUs") since at least 1987; that over this time, including the period from 1 July 2002, the LRA has been directing attacks against both the UPDF and LDUs and against civilian populations; that, in pursuing its goals, the LRA has engaged in a cycle of violence and established a pattern of "brutalization of civilians" by acts including murder, abduction, sexual enslavement, mutilation, as well as mass burnings of houses and looting of camp settlements; that abducted civilians, including children, are said to have been forcibly "recruited" as fighters, porters and sex slaves to serve the LRA and to contribute to attacks against the Ugandan army and civilian communities;

6. **CONSIDERING** that the existence and acts of the LRA, as well as their impact on Uganda's armed forces and civilian communities, have been reported by the Government of Uganda and its agencies and by several independent sources, including the United Nations, foreign governmental agencies, non-governmental organisations and world media;
7. **CONSIDERING** the allegations that the LRA was founded and is led by Joseph Kony, the Chairman and Commander-in-Chief, and that the LRA is organised in a military-type hierarchy and operates as an army;
8. **CONSIDERING** the allegations that LRA forces are divided into four brigades named Stockree, Sinia, Trinkle and Gilva, and that since July 2002 the LRA's hierarchy of posts under Joseph Kony's overall leadership has included Vincent Otti, the Vice-Chairman and Second-in-Command; the Army Commander; three senior posts of Deputy Army Commander, Brigade

General and Division Commander; and four Brigade Commanders of equal rank, one of whom is **DOMINIC ONGWEN**;

9. **CONSIDERING** the specific allegations that Joseph Kony, Vincent Otti and other senior LRA commanders, including **DOMINIC ONGWEN**, are the key members of "Control Altar", the section representing the core LRA leadership responsible for devising and implementing LRA strategy, including standing orders to attack and brutalise civilian populations;
10. **HAVING EXAMINED** the Prosecutor's submission that, in his capacity as Brigade Commander of the Sinia Brigade of the LRA, **DOMINIC ONGWEN** ordered the commission of several crimes within the jurisdiction of the Court during May 2004;
11. **CONSIDERING** that sources indicated by the Prosecutor as confirming **DOMINIC ONGWEN**'s role within the LRA's leadership include statements from former LRA commanders, victim or witness accounts, radio broadcast recordings and short-wave radio communications with other LRA commanders intercepted by Ugandan authorities;
12. **CONSIDERING** the Prosecutor's allegations that, in or around the middle of the year 2002, Joseph Kony ordered LRA forces to begin a campaign of attacks against civilians in the regions of Lango and Teso; that, in or about June 2003, Joseph Kony ordered LRA fighters, known also as rebels, to move into the Teso region, attack the UPDF forces and civilian settlements and abduct civilians for the purpose of recruitment to the ranks of the LRA (the "Teso campaign"); that, in response to Joseph Kony's orders, senior LRA

commanders and all of the brigade commanders, including **DOMINIC ONGWEN**, moved into the Teso region to conduct LRA operations; that LRA operations also continued to be conducted in the Acholi region; that, at some time before or during the last quarter of 2003, Joseph Kony issued broad orders to target and kill civilian populations, including those living in camps for internally displaced persons ("IDP"); that, during the Teso campaign and other LRA operations, there existed standing orders, given by Joseph Kony, to loot and to abduct civilians; that **DOMINIC ONGWEN**'s direct involvement with the objectives and strategies of the campaign as a whole is shown by recordings of intercepted radio communications, accounts from former members of the LRA and accounts from witnesses and victims;

13. **NOTING** that the Prosecutor's application charges **DOMINIC ONGWEN** with criminal responsibility for the attack on the Lukodi IDP Camp mentioned hereafter forming part of the Teso campaign and having occurred in May 2004;

14. **NOTING** that the Prosecutor charges **DOMINIC ONGWEN** with crimes against humanity and war crimes, as specified in Counts 27 to 33 of his application, in connection with the attack on the Lukodi IDP Camp;

Attack on Lukodi IDP Camp

15. **NOTING** that the Prosecutor alleges that, on or about 20 May 2004, the Lukodi IDP Camp was attacked by an armed group who first attacked the local defence forces and then started "shooting and beating civilian residents, burning huts and looting"; that, according to the United Nations, the attack

resulted in 41 people being killed and in an unknown number being abducted and injured; that, according to Ugandan authorities and local hospital records, the attack resulted in the death of at least 40 civilians, the injury of at least 13 people, the abduction of at least six people, as well as in approximately 210 civilian houses being burnt;

16. **NOTING** that the evidence submitted, including intercepted radio communications, suggests that the attack was carried out in fulfilment of Joseph Kony's orders and that **DOMINIC ONGWEN** acknowledged that he was the commander of the LRA forces that attacked the Lukodi IDP Camp;

17. **NOTING** article 58 and article 19 of the Statute of the Court (the "Statute");

18. **NOTING** the letter of referral dated the 16th day of December 2003 from the Attorney General of the Republic of Uganda, appended as Exhibit A to the Prosecutor's application, by which the "situation concerning the Lord's Resistance Army" in northern and western Uganda was submitted to the Court;

19. **NOTING** the Prosecutor's conclusion that "the scope of the referral encompassed all crimes committed in Northern Uganda in the context of the ongoing conflict involving the LRA" and that the Prosecutor notified the Government of Uganda of his conclusion as referred to in paragraph 1 of the Prosecutor's application;

20. **NOTING** the “Declaration on Temporal Jurisdiction”, dated the 27th day of February 2004, appended as Exhibit B to the Prosecutor’s application, whereby the Republic of Uganda accepted the exercise of the Court’s jurisdiction for crimes committed following the entry into force of the Statute on the 1st day of July 2002;
21. **NOTING** the “Letter on Jurisdiction” dated the 28th day of May 2004 from the Solicitor-General of the Republic of Uganda to the Prosecutor, appended as Exhibit C to the Prosecutor’s application;
22. **NOTING** that all of the crimes alleged against **DOMINIC ONGWEN** fall within the provisions of articles 5, 7 and 8 of the Statute, and that such crimes are alleged to have taken place after the 1st day of July 2002 and within the context of the situation in Uganda as referred to the Court;
23. **NOTING** the Prosecutor’s determination that the requirements of article 53, paragraph 1, of the Statute were satisfied;
24. **NOTING** that the Prosecutor affirms in paragraph 3 of the application that letters of notification were distributed to “all States parties under article 18, paragraph 1, of the Statute, as well as to other States that would normally exercise jurisdiction”; and that the Prosecutor had not received from any State information pursuant to article 18, paragraph 2, of the Statute;

25. **NOTING** the statements in the "Letter of Jurisdiction" dated the 28th day of May 2004, that "the Government of Uganda has been unable to arrest ... persons who may bear the greatest responsibility" for the crimes within the referred situation; that "the ICC is the most appropriate and effective forum for the investigation and prosecution of those bearing the greatest responsibility" for those crimes; and that the Government of Uganda "has not conducted and does not intend to conduct national proceedings in relation to the persons most responsible";
26. **BEING SATISFIED** that, on the basis of the application, the evidence and other information submitted by the Prosecutor, and without prejudice to subsequent determination, the case against **DOMINIC ONGWEN** falls within the jurisdiction of the Court and appears to be admissible;
27. **NOTING** articles 5, 7 and 8 of the Statute setting out crimes against humanity and war crimes; and noting also the Elements of Crimes;
28. **NOTING** the evidence submitted by the Prosecutor in support of the existence of the contextual elements of the alleged crimes;
29. **NOTING** that the Prosecutor relies on several categories of evidence to support the allegations made in his application;
30. **BEING SATISFIED**, on the basis of the application, the evidence and other information submitted by the Prosecutor, that there are reasonable grounds to believe that **DOMINIC ONGWEN**, together with other persons whose

arrests are sought by the Prosecutor, ordered the commission of crimes within the jurisdiction of the Court, namely, crimes against humanity and war crimes, particulars of which are set out in the following counts as numbered in the Prosecutor's application:

Count Twenty-Seven

(Murder at Lukodi IDP Camp Constituting Crimes Against Humanity)

On or about 20 May 2004, ordering the commission of crimes against humanity which in fact occurred, namely, the unlawful killings of approximately 40 civilian residents of Lukodi IDP Camp, near Gulu town, Bungatira Sub-County, Aswa County, Gulu District, Uganda (articles 7(1)(a) and 25(3)(b) of the Statute);

Count Twenty-Eight

(Enslavement at Lukodi IDP Camp Constituting Crimes Against Humanity)

On or about 20 May 2004, ordering the commission of crimes against humanity which in fact occurred, namely, the enslavement of at least six civilian residents of Lukodi IDP Camp, near Gulu town, Bungatira Sub-County, Aswa County, Gulu District, Uganda (articles 7(1)(c) and 25(3)(b) of the Statute);

Count Twenty-Nine

(Inhumane Acts at Lukodi IDP Camp Constituting Crimes Against Humanity)

On or about 20 May 2004, ordering the commission of crimes against humanity which in fact occurred, namely, the inhumane acts of inflicting serious bodily injury and suffering upon at least 13 civilian residents of Lukodi IDP Camp, near Gulu town, Bungatira Sub-County, Aswa County, Gulu District, Uganda (articles 7(1)(k) and 25(3)(b) of the Statute);

Count Thirty

(Murder at Lukodi IDP Camp Constituting War Crimes)

On or about 20 May 2004, ordering the commission of war crimes which in fact occurred, namely, the killings of approximately 40 civilian residents of Lukodi IDP Camp, near Gulu town, Bungatira Sub-County, Aswa County, Gulu District, Uganda (articles 8(2)(c)(i) and 25(3)(b) of the Statute);

Count Thirty-One

(Cruel Treatment at Lukodi IDP Camp Constituting War Crimes)

On or about 20 May 2004, ordering the commission of war crimes which in fact occurred, namely, the cruel treatment of civilian residents of Lukodi IDP Camp, by abducting a group of at least six residents, forcing them to march under armed guard and threat of death, separating them forcibly from their children, and killing abductees in their presence, near Gulu town, Bungatira Sub-County, Aswa County, Gulu District, Uganda (articles 8(2)(c)(i) and 25(3)(b) of the Statute);

Count Thirty-Two

(Attack Against the Civilian Population at Lukodi IDP Camp Constituting War Crime)

On or about 20 May 2004, ordering the commission of a war crime which in fact occurred, namely, the intentional directing of attacks against the civilian population of Lukodi IDP Camp, near Gulu town, Bungatira Sub-County, Aswa County, Gulu District, Uganda, and against individual civilians not taking direct part in hostilities (articles 8(2)(e)(i) and 25(3)(b) of the Statute);

Count Thirty-Three

(Pillaging at Lukodi IDP Camp Constituting War Crimes)

On or about 20 May 2004, ordering the commission of a war crime which in fact occurred, namely, the pillaging of Lukodi IDP Camp, near Gulu town, Bungatira Sub-County, Aswa County, Gulu District, Uganda (articles 8(2)(e)(v) and 25(3)(b) of the Statute);

31. **NOTING** the reasons advanced by the Prosecutor as to the necessity for arrest, namely, to ensure **DOMINIC ONGWEN**'s appearance at trial; to ensure that he does not obstruct or endanger the investigation, either individually or on a collective basis; and to prevent him from continuing to commit crimes within the jurisdiction of the Court;

32. **BEING SATISFIED** that the issuance of a warrant of arrest appears necessary based on the facts and circumstances referred to in the Prosecutor's application, namely that the LRA has been in existence for the past 18 years; and that the LRA's commanders are allegedly inclined to launch retaliatory strikes, thus creating a risk for victims and witnesses who have spoken with or provided evidence to the Office of the Prosecutor;

33. **NOTING** the statements made by the Prosecutor at the hearings on the 16th day of June 2005 and the 21st day of June 2005 to the effect that attacks by the LRA are still occurring and that there is therefore a likelihood that failure to arrest **DOMINIC ONGWEN** will result in the continuation of crimes of the kind described in the Prosecutor's application;

34. **NOTING** the Prosecutor's request that the application and all proceedings relating thereto be treated as under seal and be kept under seal;

FOR THESE REASONS,

35. PRE-TRIAL CHAMBER II GRANTS the Prosecutor's application for a warrant of arrest for **DOMINIC ONGWEN** pursuant to article 58 of the Statute and **HEREBY ISSUES:**

36. A WARRANT OF ARREST (the "Warrant") for the **SEARCH, ARREST, DETENTION AND SURRENDER** to the Court of **DOMINIC ONGWEN**, a male, who was last known to be serving in the LRA as Brigade Commander of the Sinia Brigade; and who is believed to be a national of Uganda;

37. ORDERS that the said **DOMINIC ONGWEN** be advised at the time of his arrest, and in a language he fully understands and speaks, of his rights as set forth in the following provisions of the Statute and the Rules of Procedure and Evidence, the texts of which are annexed to the Warrant:

- article 19, paragraph 2 (challenges to the jurisdiction of the Court or the admissibility of a case);
- article 55, paragraph 2 (rights of persons during an investigation);
- article 57 (functions and powers of the Pre-Trial Chamber);
- article 59 (arrest proceedings in the custodial State);
- article 60 (initial proceedings before the Court);
- article 61 (confirmation of the charges before trial);

- article 67 (rights of the accused);
- rule 21 (assignment of legal assistance);
- rule 112 (recording of questioning in particular cases);
- rule 117 (detention in the custodial State);
- rule 118 (pre-trial detention at the seat of the Court);
- rule 119 (conditional release);
- rule 120 (instruments of restraint);
- rule 121 (proceedings before the confirmation hearing);
- rule 122 (proceedings at the confirmation hearing in the presence of the person charged);
- rule 123 (measures to ensure the presence of the person concerned at the confirmation hearing);
- rule 124 (waiver of the right to be present at the confirmation hearing);
- rule 187 (translation of documents accompanying request for surrender);

38. **ORDERS** that the Warrant shall remain in effect until further order by the Chamber;

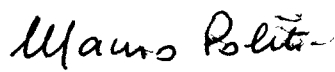
39. **AUTHORISES** the Warrant to be made available and disclosed to persons or entities designated by the authorities of the State requested in the Request for Arrest and Surrender and only for the purposes of the execution of the Warrant;

40. **ORDERS** that the Warrant, in all other respects, be kept under seal until further order by the Chamber;

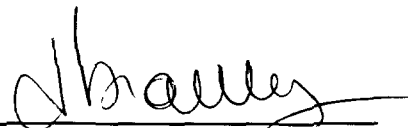
41. Done in both English and French, the English version being authoritative.



Judge Tuiloma Neroni Slade
Presiding Judge



Judge Mauro Politi



Judge Fatoumata Dembele Diarra

Dated this 8th day of July 2005

At The Hague, The Netherlands

Seal of the Court