

**Cour
Pénale
Internationale**

**International
Criminal
Court**

No.: ICC-02/04-01/05

Date: 27 September 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

**REQUEST TO THE DEMOCRATIC REPUBLIC OF THE CONGO FOR ARREST
AND SURRENDER OF JOSEPH KONY**

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 application for Warrants of Arrest under Article 58” dated the 6th day of May 2005, as amended and supplemented 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 dated the 18th day of May 2005;

HAVING DECIDED to grant the Prosecutor’s application and having issued a sealed warrant of arrest for **JOSEPH KONY** under article 58 of the Statute of the Court (the “Statute”) on the 8th day of July 2005 and an amended warrant of arrest for **JOSEPH KONY** on the 27th day of September 2005 (the “Warrant”);

NOTING the Chamber’s decision dated the 27th day of September 2005 on the Prosecutor’s Urgent Application dated the 26th day of September 2005, that a request for arrest and surrender of **JOSEPH KONY** related to the Warrant (“this Request”) be issued and transmitted to the Democratic Republic of the Congo;

NOTING the Chamber’s decision that this Request be transmitted by the Registrar;

CONSIDERING it important, for the purposes of the transmission of this Request and of the Warrant, that the Registrar, on the one hand, and the Prosecutor, on the other, act on the basis of the fullest and closest possible consultation and cooperation;

NOTING the relevant provisions of the Statute, including, in particular, articles 59, 60, 87, 89, 90 and 91;

NOTING, in particular, article 89, paragraph 1, of the Statute, providing that the Court may transmit a request for the arrest and surrender of a person to any State in the territory of which that person may be found;

NOTING also the relevant provisions of the Rules of Procedure and Evidence (the "Rules"), including, in particular, rules 117, 176, 184 and 187;

NOTING the Chamber's decision dated the 8th day of July 2005 granting the Prosecutor's request that the application and all the proceedings relating thereto be treated as under seal and be kept under seal;

NOTING the Chamber's decision dated the 8th day of July 2005 granting the Prosecutor's request for appropriate protective measures under article 87, paragraph 4, of the Statute;

NOTING the Chamber's decision dated the 8th day of July 2005 that any information relating to the Prosecutor's application, the warrant of arrest and subsequent proceedings be provided and handled in a manner that protects the safety or physical or psychological well-being of any victims, potential witnesses and their families, in particular those mentioned in the Prosecutor's application, in accordance with articles 68 and 87, paragraph 4, of the Statute;

NOTING the Chamber's decision dated the 8th of July 2005 that, without prejudice to the responsibilities of the Prosecutor under the Statute, any measures, including relocation and measures related to the protection of information, as may be necessary or appropriate to ensure the safety or physical or psychological well-being of any victims, potential witnesses and their families, and in particular of those mentioned in the

Prosecutor's application, be taken pursuant to articles 68 and 87, paragraph 4, of the Statute;

NOTING also the Chamber's decision dated the 8th of July that, without prejudice to the responsibilities of the Prosecutor under the Statute, any other measures which may be necessary or appropriate to prevent the disclosure of the identity or whereabouts of any victims, potential witnesses and their families, in particular of those mentioned in the Prosecutor's application, be taken;

FOR THESE REASONS,

PRE-TRIAL CHAMBER II HEREBY:

REQUESTS the **Democratic Republic of the Congo** (the "Requested State"), on the basis of the Warrant, to **SEARCH FOR, ARREST, DETAIN AND SURRENDER** to the Court **JOSEPH KONY**, a male who is the alleged founder and leader of the Lord's Resistance Army (the "LRA") and known as "the Chairman", "the Commander-in-Chief" and the overall commander or head of the LRA, who is believed to be a national of Uganda, born in Omoro County, Gulu District, Uganda, and to be approximately 40 years of age; who was last known to be living or encamped in southern Sudan; and who is alleged in the Prosecutor's application to have committed crimes within the jurisdiction of the Court, namely crimes against humanity and war crimes under articles 5, 7 and 8 of the Statute, as specified in the Warrant;

REQUESTS the Registrar, in consultation with the Prosecutor, to transmit this Request, and the enclosed documentation as required by article 91, paragraph 2, of the Statute, to the Requested State, with a view to its execution;

REQUESTS the Registrar to provide and handle any information relating to the Prosecutor's application, this Request and subsequent proceedings in a manner that protects the safety or physical or psychological well-being of any victims, potential witnesses and their families, in particular those mentioned in the Prosecutor's application, in accordance with articles 68 and 87, paragraph 4, of the Statute;

REQUESTS the Registrar, in consultation and cooperation with the Prosecutor, to take any measures, including relocation and measures related to the protection of information, as may be necessary or appropriate to ensure the safety or physical or psychological well-being of any victims, potential witnesses and members of their families, in particular of those mentioned in the Prosecutor's application, pursuant to articles 68 and 87, paragraph 4, of the Statute;

REQUESTS the Registrar, in consultation and cooperation with the Prosecutor, to take any other measures which may be necessary or appropriate to prevent the disclosure of the identity or whereabouts of any victims, potential witnesses and members of their families, in particular of those mentioned in the Prosecutor's application;

REQUESTS 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;

REQUESTS the Registrar to consult the Prosecutor with regard to any documents, statements or information which may need to be attached to this Request in order to meet the requirements for the surrender process in the Requested State, as appropriate, pursuant to article 91, paragraph 2 (c), of the Statute;

INVITES the Prosecutor to cooperate fully with the Registrar with a view to facilitating the transmission of this Request to the Requested State and its execution;

REQUESTS the Registrar to promptly refer to the Chamber for further direction any difficulty that may arise in the execution of this Request;

REQUESTS the Requested State to treat this Request and the enclosed documentation confidentially, and to handle any information pertaining thereto in a manner that protects the safety or physical or psychological well-being of any victims, potential witnesses and their families, in accordance with article 87, paragraph 4, of the Statute;

REQUESTS the Registrar to ensure that **JOSEPH KONY** receives a copy of the Warrant in a language that he fully understands and speaks, pursuant to rules 117, sub-rule 1, and 187 of the Rules;

REQUESTS furthermore the Registrar to ensure that **JOSEPH KONY** be informed, at the time of his arrest and in a language he fully understands and speaks, of his rights in accordance with the provisions of the Statute and the Rules, as specified in the Warrant;

REQUESTS the Registrar to draw the attention of **JOSEPH KONY** to his right to apply to the competent authority in the custodial State for interim release pending surrender pursuant to article 59, paragraph 3, of the Statute, as well as to his right to apply for interim release upon his surrender to the Court and pending trial pursuant to article 60, paragraph 2, of the Statute;

REQUESTS the Requested State to inform the Registrar of any request or requirement that may delay the execution of the Warrant, in particular pursuant to articles 89, paragraph 2, 90, 91, paragraph 2 (c), and 97 of the Statute;

REQUESTS the Requested State to immediately inform the Registrar when **JOSEPH KONY** is available for surrender to the Court pursuant to rule 184 of the Rules;

REQUESTS furthermore the Requested State to promptly notify the Chamber of any request for interim release pursuant to article 59, paragraph 3, of the Statute;

DIRECTS the Registrar to keep the Chamber informed of any difficulties in transmitting this Request and in executing the Warrant and to ensure that, once ordered to be surrendered by the custodial State, **JOSEPH KONY** is delivered to the Court as soon as possible, pursuant to article 59, paragraph 7, of the Statute;

DIRECTS furthermore the Registrar, in transmitting this Request, to attach to it the following documents:

- a copy of the Warrant and its annexes, in particular the relevant provisions of the Statute and the Rules concerning the rights of a person whose arrest is sought, as well as their translation in a language that **JOSEPH KONY** fully understands and speaks;
- any other document which may be necessary to meet the requirements of the surrender process in the Requested State, as appropriate, pursuant to article 91, paragraph 2(c), of the Statute;

AUTHORISES this Request to be made available and disclosed to persons or entities designated by the authorities of the Requested State and only for the purposes of the assistance requested;

ORDERS that this Request, in all other respects, be 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 27th day of September 2005

At The Hague, The Netherlands

ORDERS that this Request, in all other respects, be 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 27th day of September 2005

At The Hague, The Netherlands

Seal of the Court