

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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PRE-TRIAL CHAMBER II

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

Registrar: Mr Bruno Cathala

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

Under Seal, Ex Parte, Prosecutor and Registrar only

Prosecution's Submission in Advance of Hearing Scheduled for 11 December 2007

The Office of the Prosecutor
Mr Luis Moreno-Ocampo, Prosecutor
Mrs Fatou Bensouda, Deputy Prosecutor
Mr Éric MacDonald, Trial Lawyer

The Office of the Prosecutor ("OTP") respectfully submits information on the status of the execution of the warrants of arrest in the situation in Uganda, in advance of the Hearing to take place on 11 December 2007, on the Status of Cooperation for the Execution of the Warrant of Arrest.¹ This submission seeks to provide an update on the activities of the OTP in regards to furthering arrest efforts and the status of cooperation with the Court by the relevant states parties, the UN and other international organisations for the execution of the Warrants and the Requests for Arrest and Surrender.

Procedural Background

1. On 8 November 2007, this Chamber issued the "Decision to Convene a Status Conference on the Status of Cooperation for the execution of Warrants of Arrest in the Case of The Prosecutor v. Joseph KONY, Vincent OTTI, Okot ODHIAMBO and Dominic ONGWEN."²

Request for Sealing

2. The OTP requests that this filing be received under seal, *ex parte*, Prosecutor and Registrar only. The OTP makes this request since the filing refers to information which if made public may hinder arrest efforts and relates to the hearing scheduled to be held in a closed session.³

¹ ICC-02/04-01/05-259, 8 November 2007.

² ICC-02/04-01/05-259, 8 November 2007.

³ ICC-02/04-01/05-259, 8 November 2007. The Pre-Trial Chamber considered that the envisioned provision of information, "...may entail the disclosure of sensitive and confidential information, and that such information should not be heard in public at this stage", *see* p. 5.

Introduction

3. The OTP appreciates the opportunity to address and submit information to the Pre-Trial Chamber on the status of the execution of the arrest warrant issued in the case *Prosecutor vs. Kony et al.*
4. As indicated in the Court's decision, the need to execute the warrants of arrest is imperative for the Court. While recognizing the operational challenges States are faced with to proceed with the arrests of leaders of armed groups, the OTP submits that there are opportunities to push ahead for the arrests, that it requires a concerted effort of the territorial States with a more determined effort by all States Parties and the United Nations to support such a move. The OTP developed different initiatives to galvanize national and international efforts to arrest and made public statements to the same effect. They are described below.

Overview of Developments in 2007

5. Since December 2006, the majority of the LRA, including the remaining LRA suspects, have been located primarily in the Democratic Republic of the Congo ("DRC").⁴ The LRA have established their main base on the western side of Garamba National Park in the DRC and have completely regrouped there since the beginning of 2007.⁵ The LRA reportedly made a brief move towards the Central African Republic in February⁶ but returned to their main base on the

⁴ "Northern Uganda Peace Process: The Need to Maintain Momentum", International Crisis Group, 14 September 2007 (available at <http://www.crisisgroup.org/home/index.cfm?id=5078&CFID=5956930&CFTOKEN=39892046> (last accessed 10 December 2007)).

⁵ "Acholi elders to Juba to save talks", *The New Vision*, 8 February 2007 (available at <http://www.newvision.co.ug/PA/8/12/548013> (last accessed 10 December 2007)); "Northern Uganda Peace Process: The Need to Maintain Momentum", International Crisis Group, 14 September 2007 (available at <http://www.crisisgroup.org/home/index.cfm?id=5078&CFID=5956930&CFTOKEN=39892046> (last accessed 10 December 2007)).

⁶ "Acholi elders to Juba to save talks", *The New Vision*, 8 February 2007 (available at <http://www.newvision.co.ug/PA/8/12/548013> (last accessed 10 December 2007)); See OTP Submissions ICC-02/04-01/05-235-Conf-Exp, 2 April 2007 and ICC-02/04-01/05-240-Conf-Exp, 5 April 2007.

western edge of Garamba National Park by March 2007 where they have reportedly remained since that time.⁷

6. Given the location of the LRA in the DRC and its ability to move across borders, there is a need for cooperation among relevant territorial states and international organisations to effectuate the arrest. As indicated in previous submissions, in October 2006 the Government of the DRC ("GoDRC") requested the assistance of the MONUC in executing the arrest warrants. In addition, numerous other steps have been taken to improve the regional cooperation necessary to execute the arrest warrants issued against the LRA (see below).
7. The current Juba Peace Process has been ongoing since June 2006. It is the OTP firm position, expressed publicly in different occasions, that this process does not in any way present a legal justification for not executing the arrest warrants.⁸
8. Between April⁹ and June 2007 the Government of Uganda ("GoU") and the LRA concluded several Agreements. On 14 April, the GoU and LRA renewed the Cessation of Hostilities Agreement¹⁰, agreeing this time to allow the LRA to assemble in one assembly point, Ri-Kwangba in Southern Sudan. The date for assembly has subsequently been extended several times the last extension being on 4 November 2007. On 2 May the GoU and LRA signed the Agreement on

⁷ On 11 March 2007, with the assistance of Joaquim Chissano, Special Envoy of the United Nations Secretary General for the LRA Affected Areas, GoU authorities met with Joseph Kony to discuss the resumption of peace talks. See Statement by the President of the Security Council, 22 March 2007 (available at <http://www.securitycouncilreport.org/atf/cf/i65BFCF9B-6D27-4E9C-8CD3-CF6E4FE96FF9/Uganda%20SPRST%202007%206.pdf> (last accessed 10 December 2007)); The OTP also received information from security sources that the four LRA commanders had all returned to the main LRA base by March 2007.

⁸ Statement of Luis Moreno-Ocampo, ICC Assembly of States Parties, 30 November 2007 (available at http://www.icc-cpi.int/library/asp/Statement_Prosecutor_en_30Nov2007.pdf (last accessed 10 December 2007)).

⁹ "Juba peace talks resume today", *The New Vision (Uganda)*, 26 April 2007 (available at <http://www.newvision.ug/10/8/13/561885> (last accessed 10 December 2007)); "Uganda government, rebels resume talks after three month break," *Sudan Tribune*, 26 April 2007 (available at <http://www.sudantribune.com/spip.php?article21585> (last accessed 10 December 2007)).

¹⁰ <http://www.mediacentre.go.ug/uploads/CoHA%20Adendum3.pdf>

Comprehensive Solutions. On 29 June 2007, they signed the Agreement on Accountability and Reconciliation.¹¹ The Agreement states that the parties are committed to "preventing impunity and promoting redress in accordance with... the requirements of the Rome Statute of the International Criminal Court (ICC) and in particular the principle of complementarity."¹²

9. After June, however, the talks have not resumed. Parties agreed to consult with the affected communities in Northern Uganda on the issue of Justice. Formal talks have not resumed since that time.¹³ Tensions within the LRA have escalated and there are currently reports of inter-LRA killing, including the reported killing of Vincent Otti as well as defections of combatants and the expression of frustration among the LRA negotiation team.¹⁴
10. The dynamics within the LRA appear to be changing. The reported killing of Vincent Otti, the Deputy Chairman and the defection of a number of LRA members indicates that tensions within the LRA are resulting in internal divisions.¹⁵ These divisions appear to be at a high level and could weaken the LRA militarily, provide national and international authorities with vital operational information about the LRA, and possibly create new opportunities for arrest.

¹¹ http://www.santegidio.org/archivio/pace/uganda_20070629_EN.htm.

¹² Agreement on Accountability and Reconciliation, 29 June 2007 (available at http://www.santegidio.org/archivio/pace/uganda_20070629_EN.htm (last accessed 10 December 2007)).

¹³ On 2 October 2007, the Ugandan Minister of Foreign Affairs, Mr. Sam Kutesa, in his address to the UN General Assembly in New York requested that "We urge the international community to bring adequate pressure to bear on the LRA to assemble in Ri-Kwangba and to put a timeframe to the talks. Talks cannot go on forever." See <http://www.iccnw.org/documents/GeneralDebateExcerpts2007.pdf> (last accessed 10 December 2007)).

¹⁴ LRA delegation member James Obita is quoted as stating "If Kony refuses to sign a peace deal by February, 2008, none of us will be behind him. We shall all abandon him in the bush and come back home," "Uganda: LRA May Abandon Kony", IWPR, 21 November 2007 (available at <http://allafrica.com/stories/200711210581.html> (last accessed 10 December 2007)).

¹⁵ See section on "Information Regarding the Reported Death of Vincent Otti and LRA Defections" below.

The Status of those Named in the Arrest Warrants

11. Since March 2007, there have been no significant movements of the four LRA commanders, Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen. Rather they appear to remain located primarily in the areas west of Garamba National Park, making brief visits to Ri-Kwangba, Southern Sudan for meetings.¹⁶
12. The four LRA suspects have participated in several meetings with UN officials, including UN Special Envoy Joachim Chissano, officials of the Government of Uganda, and local Ugandan leaders over the course of 2007. The last meeting where all four LRA suspects reportedly attended was in Ri-Kwangba, Southern Sudan on 25-26 September 2007.¹⁷ Such meetings are conducted within the framework of the peace talks and under conditions imposed by the LRA that they provide the security.¹⁸
13. Around 23 October 2007, UN Special Envoy Chissano and Chief Mediator, GoSS Vice President Riek Machar, met with LRA commanders Okot Odhiambo and Dominic Ongwen in Ri-Kwangba to discuss the resumption of peace talks. Otti, who normally leads these meetings, was absent.¹⁹
14. The OTP is receiving information on such meetings from a diversity of actors, the UN, the NGO community and the authorities of Uganda and States supporting the Peace process. While the Office accepts that such meetings can be necessary for humanitarian purposes or facilitating Peace talks, the Office has, on each occasion, and to each interlocutor, expressed concern that respect for the ICC and the integrity of the arrest warrants is not always conveyed with sufficient clarity.

¹⁶ Ri-Kwangba is approximately 5 km north of the Congolese border. "LRA Opiyo Makasi interview," *Sunday Vision*, Els de Temmerman, 3 November 2007 (available at http://groups.google.com.py/group/sudan-john-ashworth/browse_thread/thread/c3a306dda50f2ddf (last accessed 10 December 2007)). See GoU Report on the Execution of Warrants, Submission to the Registry, 30 November 2007.

¹⁷ OTP received an updates from the Acholi delegation that met with the LRA.

¹⁸ OTP received updates on these meetings from UN and the GoU.

¹⁹ The OTP received updates from the UN on this meeting.

Information Regarding the Reported Death of Vincent Otti and LRA Defections

15. On 8 November, the OTP informed the Pre-Trial Chamber of media reports regarding the alleged killing of Vincent OTTI. The OTP has transmitted requests for assistance to the GoU, GoDRC, and MONUC for information regarding the reported death of Vincent Otti and information obtained from LRA defector, including Patrick Opio Makasi. In addition, the OTP conducted a field mission to Uganda in November 2007 to gather information on Otti's reported death.
16. There have been several reports indicating a split within the LRA between Kony and Otti.²⁰ Although the death of Otti cannot be confirmed at this time,²¹ recent information, including reports from recently defected LRA members, indicate that Otti was brutally killed on 2 October pursuant to Kony's orders.²²
17. Other information appears to corroborate the death of Otti including that Kony reportedly promoted Okot Odhiambo to replace Otti as the Deputy Chairman of the LRA. Also since 2 October 2007, there have been no credible reports of

²⁰ "LRA Opiyo Makasi interview," *Sunday Vision*, Els de Temmerman, 3 November 2007 (available at http://groups.google.com.py/group/sudan-john-ashworth/browse_thread/thread/c3a306dda50f2ddf (last accessed 10 December 2007)). On 8 November, Kony reportedly called Gulu Chairman Nobert Mao stating that Otti was under arrest. See "Kony Breaks Silence on Otti", IWPR, 9 November 2007 (available at http://iwpr.net/index.php?apc_state=hen&s=o&o=l=EN&p=acr&s=f&o=340491 (last accessed 10 December 2007)).

²¹ On 30 November 2007, the OTP received a communication from Acting Solicitor General Jane Kiggundu in response to an OTP Request for Assistance that "The Government of Uganda is yet to confirm the reported death of Vincent Otti. The ICC will be provided with information once investigations into the matter are concluded."

²² The other members of the LRA reportedly killed along with Otti include Lt. Col. Ben Acellam, Major Swaib Ayumani, Capt. Otim Record. See "Vincent Otti is confirmed dead", *The New Vision*, Fortunate Ahimbisibwe and Gerald Tenywa, 21 November 2007 (available at <http://www.newvision.co.ug/D/8/12/598396> (last accessed 10 December 2007)); "Uganda: LRA Meeting Turns Rowdy", *The New Vision*, Patrick Jaramogi, 26 November 2007 (available at <http://allafrica.com/stories/200711270070.html> (last accessed 10 December 2007)), see further Lord's Resistance Army leader killed: report, Independent Online (South Africa), 22 November 2007 (available at http://www.int.iol.co.za/index.php?set_id=1&click_id=136&art_id=nw20071122093708307C380387 (last accessed 10 December 2007)); "Talks to continue without Otti – Rugunda", *The New Vision*, 5 December 2007 (available at <http://www.newvision.co.ug/D/8/13/600635> (last accessed 10 December 2007)); "How Vincent Otti was killed", *Sunday Vision*, 10 December 2007 (available at <http://sundayvision.co.ug/index.php?mainNewsCategoryId=120&newsCategoryId=130> (last accessed 10 December 2007)).

persons outside the LRA communicating with Otti who has been known to maintain an extensive contact base through the use of his satellite phone.²³

18. Around November 16, as part of a strategy to further marginalize Kony, the OTP resumed broadcasting on Gulu radio. A message by the Prosecutor indicates that the ICC had issued arrest warrants only against the four LRA commanders; other LRA fighters, those who did not bear the greatest responsibility for crimes committed, should come out of the bush and re-integrate into their communities in accordance with national accountability mechanisms.
19. A number of LRA defections are reported. The first defection on 2 October was Patrick Opio Makasi, the LRA Director of Operations.²⁴ Next on 30 November, seven LRA members returned to Uganda after surrendering to MONUC.²⁵ These members stated that there is a larger group of LRA, possibly numbering up to 300, also wanting to defect but the whereabouts and circumstances of this group remain uncertain.²⁶

²³ "Ugandan rebel deputy feared dead", *BBC News*, 7 November 2007 (available at <http://news.bbc.co.uk/1/hi/world/africa/7082437.stm> (last accessed 10 December 2007)).

²⁴ Makasi left the LRA base near Suke, Garamba National Park on 2 October heading south to defect to MONUC. "Vincent Otti is confirmed dead", *The New Vision*, Fortunate Ahimbisibwe and Gerald Tenywa, 21 November 2007 (available at <http://www.newvision.co.ug/D/8/12/598396> (last accessed 10 December 2007)).

²⁵ "Deputy of Uganda's rebel LRA executed: deserter", Reuters, 30 November 2007 (available at http://www.boston.com/news/world/africa/articles/2007/11/30/deputy_of_ugandas_rebel_lra_executed_deserter/ (last accessed 10 December 2007)).

²⁶ "300 LRA rebels quit", *The Monitor*, Frank Nyakairu, 23 November 2007 (available at http://www.monitor.co.ug/artman/publish/news/300_LRA_rebels_quit.shtml (last accessed 10 December 2007)); "Museveni pardons 2 rebels", *The Monitor*, Frank Nyakairu, 27 November 2007 (available at http://www.monitor.co.ug/artman/publish/news/Museveni_pardons_2_rebels.shtml (last accessed 10 December 2007)).

²⁶ "Vincent Otti is confirmed dead", *The New Vision*, Fortunate Ahimbisibwe and Gerald Tenywa, 21 November 2007 (available at <http://www.newvision.co.ug/D/8/12/598396> (last accessed 10 December 2007)); "LRA Defectors Request President Museveni's Pardon", *Voice Of America*, 25 November 2007, Akwei Thompson (available at <http://www.voanews.com/english/Africa/2007-11-25-voa16.cfm> (last accessed 10 December 2007)).

Operational Challenges to the Execution of the Arrest Warrants

20. The LRA remains a strong armed group and reportedly threaten regional security.²⁷ Although the LRA only number reportedly around 600 fighters with several hundred dependents, the fighters are well-armed and well-trained for combat.²⁸ They also have the ability to enlist new fighters, using excess food they receive from the international community. As is widely reported, the LRA receives food for 3000 people, based on the rationale that they should assemble the designated area, Ri-Kwanga, and should be discouraged from pillaging. However the excess food is stored and can be diverted in a number of ways, including to enlist new recruits. As the Prosecutor stated in his speech to the ASP on 30 November, "Joseph Kony and the other indicted commanders must not be allowed to gain strength and financial means. There are indications that the assistance the LRA is receiving for strictly humanitarian purpose could be diverted to buy supplies or weapons. We ask States Parties and international actors to monitor with utmost vigilance such possible diversion of aid and funds to the benefit of the sought individuals."²⁹
21. The location of the LRA in a remote jungle of the DRC and their ability to disperse into small groups when attacked and regroup at a more secure location is a challenge. The killing of 8 Guatemalan peacekeepers on 23 January 2006 – an

²⁷ While the security situation has improved over the course of the peace process allowing more than half of the 1.8 million internally displaced persons in Northern Uganda to begin the return home. The LRA still remain a real threat to regional security. See UN aid chief says northern Uganda security improved, Reuters, 15 May 2007 (available at <http://www.reuters.com/article/homepageCrisis/idUSWAL563416.CH.2400> (last accessed 10 December 2007)); "Consolidated Appeals Process (CAP): Appeal 2008 for Uganda" (See executive summary), United Nations Office for the Coordination of Humanitarian Affairs, 05 December 2007 (available at <http://www.reliefweb.int/rw/RWB.NSF/db900SIID/YSAR-79KSKY?OpenDocument> (last accessed 10 December 2007)). Summary of Conclusions: Tripartite Plus Joint Commission Member States Meeting, US Department of State, 5 December 2007 (available at <http://www.state.gov/r/pa/prs/ps/2007/dec/96318.htm> (last accessed 10 December 2007)).

²⁸ "LRA Opiyo Makasi interview", *Sunday Vision*, Els de Temmerman, 3 November 2007 (available at http://groups.google.com.py/group/sudan-john-ashworth/browse_thread/thread/c3a306dda50f2dd1 (last accessed 10 December 2007)).

²⁹ Statement of Luis Moreno-Ocampo, ICC Assembly of States Parties, 30 November 2007 (available at http://www.icc-cpi.int/library/asp/Statement_Prosecutor_en_30Nov2007.pdf (last accessed 10 December 2007)).

operation not directly linked to arrest efforts and not involving any consultation with or information of the Court - demonstrates the need for careful planning and the dangers involved in operations against the LRA.³⁰ This incident is referred to in the UN Secretariat as weakening the resolve of States to support an arrest operation.

OTP Activities in Support of Arrest Efforts

22. Although the OTP is not directly involved in operational planning of arrests, this being the responsibility of the territorial States, it is the position of the Office, as expressed by the Prosecutor to the Assembly of States Parties on 30 November³¹, that the OTP have a responsibility to take steps proactively to support arrest initiatives. This includes galvanizing national efforts by territorial States as well as international cooperation to arrest and surrender, gathering information on the whereabouts and circumstances of the suspects, and marginalising the four remaining suspects from their support network and internally within their organisation.³²
23. The Prosecutor has made repeated calls for arrest of the ICC suspects in Northern Uganda.³³ On 25 June in Nuremberg on occasion of the Building a Future on

³⁰ "Security Council condemns attack on UN peacekeepers in Democratic Republic of Congo, UN Security Council Presidential Statement", 25 January 2006 (available at <http://www.un.org/News/Press/docs/2006/sc8620.doc.htm> (last accessed 10 December 2007)).

³¹ Statement of Luis Moreno-Ocampo, ICC Assembly of States Parties, 30 November 2007 (available at http://www.icc-cpi.int/library/asp/Statement_Prosecutor_en_30Nov2007.pdf (last accessed 10 December 2007)).

³² Statement of Luis Moreno-Ocampo, ICC Assembly of States Parties, 30 November 2007 (available at http://www.icc-cpi.int/library/asp/Statement_Prosecutor_en_30Nov2007.pdf (last accessed 10 December 2007)); Statement of Luis Moreno-Ocampo, *Eleventh Diplomatic Briefing of the International Criminal Court*, 10 October 2007 (available at http://www.icc-cpi.int/library/about/ICC-DB11-St_en.pdf (last accessed 10 December 2007)); Also see *Report on Prosecutorial Strategy*, OTP-ICC, 14 September 2006.

³³ "Building a Future on Peace and Justice", Address by Mr Luis Moreno-Ocampo, Nuremberg, 25 June 2007 (available at <http://www.peace-justice-conference.info/download/speech%20moreno.pdf> (last accessed 10 December 2007)); "ICC rejects withdrawing Ugandan rebel indictments", *Jurist*, 23 November 2007 (available at <http://jurist.law.pitt.edu/paperchase/2007/11/icc-rejects-withdrawing-ugandan-rebel.php> (last accessed 10 December 2007)); "Uganda: Kampala Rules Out Blanket Amnesty for LRA", *IWPR*, 8 October 2007 (available at <http://allafrica.com/stories/200710090546.html> (last accessed 10 December 2007)).

Peace and Justice Conference, the Prosecutor stated "Arrest warrants are decisions taken by the Judges in accordance with the law, they must be implemented."³⁴ Again at the ICC-ASP on 30 November the Prosecutor stated "As a Prosecutor, I believe that enforcement of the arrest warrants is a priority. As I have stated in the ASP last year victims have a right to both peace and justice. Those arrest warrants must be executed. There is no excuse."³⁵

24. In his address to the diplomatic corps on 10 October 2007, the Prosecutor identified a number of areas in which the Office is requesting States' cooperation to marginalize, reduce support and arrest those named in the arrest warrants.
25. Political and public support: Joseph Kony and the three other indicted commanders must not be allowed to re-gain credibility. All States Parties are asked to use all public occasions to recall the importance of executing the arrest warrants and to emphasize that those four individuals are allegedly responsible for massive crimes including abducting of children and transforming them into killers or sexual slaves. The LRA is continuing to commit crimes as no children have been released, as no sexual slaves have been freed. UNICEF and the UN Special Representative of the Secretary General on children in armed conflicts stated that the LRA should release the abductees immediately.³⁶
26. Marginalization of the sought individuals. Joseph Kony and the three other indicted commanders must not be allowed to gain strength and financial means.

accessed 10 December 2007)); "Acholi Victims Don't Want ICC", IWPR, 3 September 2007 (available at http://www.iwpr.net/?p=acr&s=f&o=338297&apc_state=henh (last accessed 10 December 2007)).

³⁴ "Building a Future on Peace and Justice", Address by Mr Luis Moreno-Ocampo, Nuremberg, 24/25 June 2007 (available at <http://www.peace-justice-conference.info/download/speech%20moreno.pdf> (last accessed 10 December 2007)).

³⁵ Statement of Luis Moreno-Ocampo, ICC Assembly of States Parties, 30 November 2007 (available at http://www.icc-cpi.int/library/asp/Statement_Prosecutor_en_30Nov2007.pdf (last accessed 10 December 2007)).

³⁶ Press conference by Secretary-General's Special Representative for Children and Armed Conflict, 26 June 2006 (available at http://www.un.org/News/briefings/docs/2006/060626_Coomaraswamy.doc.htm (last accessed 10 December 2007)); "Unicef calls for prompt return of children and women in LRA captivity", United Nations Children's fund, 26 August 2007 (available at <http://www.reliefweb.int/rw/rwb.nsf/db900sid:EGUA-76GMZC?OpenDocument> (last accessed 10 December 2007)).

The OTP continues to advocate for action to be taken against the supply and support network of the LRA. The Deputy Prosecutor stated that "It is time to marginalise, isolate and arrest individuals sought by the Court. The international community must give them no support."³⁷ The Prosecutor asked states parties "to monitor with utmost vigilance supply networks, possible diversion of aid and funds to the benefit of the sought individuals."³⁸ The Prosecutor recalled that any assistance that can help the sought individuals abscond from the Court would be unlawful and contravene the purpose and object of the Statute.

27. The OTP continues to gather information on the LRA supply and support network with the intention of disrupting these support networks in order to marginalise the suspects and the organisations providing them with protection. This information may also eventually be used to identify and freeze assets belonging to or being used by the suspects. Requests for information on possible assistance by Diaspora communities have and are being sent to States. States parties, in consultation with the Office, have renewed efforts domestically to monitor assistance from Diaspora communities.
28. Cooperation between relevant territorial States and MONUC. All States parties have been asked to support collaborative efforts between the DRC and Uganda to address the issue of arrests, and to encourage the support of MONUC.
29. The Prosecutor has continued to meet with territorial States as well as international organisations in this regard. On 18 June 2007, the Prosecutor met with the Ugandan Minister of Security, Amama Mbabazi. In this meeting, the Prosecutor stated that he could not in any way get involved in discussions

³⁷ "Kony must face trial - criminal court", *The New Vision*, 22 November 2007 (available at <http://www.newvision.co.ug/D/8/13/598607> (last accessed 10 December 2007)).

³⁸ Statement of Luis Moreno-Ocampo, ICC Assembly of States Parties, 30 November 2007 (available at http://www.icc-cpi.int/library/asp/Statement_Prosecutor_en_30Nov2007.pdf (last accessed 10 December 2007)). See further Statement of Luis Moreno-Ocampo, *Eleventh Diplomatic Briefing of the International Criminal Court*, 10 October 2007 (available at http://www.icc-cpi.int/library/about/ICC-DB11-St_en.pdf (last accessed 10 December 2007)).

regarding the negotiations for domestic Ugandan proceedings, that there was a Court's decision to issue arrest warrants and that those warrants had to be executed. The Prosecutor stressed that Uganda must reinvigorate its efforts to execute the arrest warrants and recommended increased consultation with the DRC. In his meetings with President Kabila, the Prosecutor also renewed his encouragement that all measures be taken to proceed with the arrests.

30. After these meetings, States have taken concrete steps to enhance effective regional cooperation to tackle the LRA including increasing coordination meetings between the UPDF, FARDC and MONUC.³⁹ On 8 September 2007, these meetings culminated in the Ngurdoto Pact which was signed by Presidents Kabila and Museveni.⁴⁰ This Agreement is significant as for the first time the Presidents of the two countries agreed to joint operations with the support of the MONUC to apprehend, demobilise and repatriate negative forces in the DRC, including the LRA.⁴¹ On 4 December, during a meeting between the Governments of Uganda and the DRC, the DRC reiterated this commitment stating that if the peace talks were not successfully concluded by 31 January 2008, the DRC will take more firm action against the LRA in consultation with the Government of Uganda.⁴²

³⁹ These meetings include: the 21 July 2007 meeting between Uganda Minister of Security Mbabazi and President Kabila to discuss regional security matters, including on the LRA; the 27 July 2007 meeting between the FARDC Chief of Armed Forces, General Kayembe, UPDF Chief of Defence General Aronda Nyakarima and MONUC Force Commander, General Babacar Gaye, held in Kinshasa to discuss joint operational planning, including the deployment of FARDC and MONUC forces to Dungu in Garamba National Park; On 18 April, the GoU representatives met with their GoDRC counterparts in the Tripartite Commission Plus. At this meeting the parties discussed ways to intensify military operations against negative forces such as the LRA.

⁴⁰ "Uganda: Congo to Flush Out LRA in 90 Days", *The New Vision*, 9 September 2007 (available at <http://www.newvision.co.ug/D/8/12/585886> (last accessed 10 December 2007)).

⁴¹ "Uganda: UN to Help Flush Out LRA Rebels", *The New Vision*, 16 September 2007 (available at <http://allafrica.com/stories/200709170016.html> (last accessed 10 December 2007)).

⁴² Summary of Conclusions: Tripartite Plus Joint Commission Member States Meeting, US Department of State, 5 December 2007 (available at <http://www.state.gov/r/pa/prs/ps/2007/dec/96318.htm> (last accessed 10 December 2007)).

31. The Central African Republic has also in principle agreed to take action against the LRA should the LRA be found in its territory. On 22 August 2007, Central African Republic President, Francois Bozize, met with President Museveni in Uganda and stated that his Government will take appropriate steps.⁴³
32. However, as the peace process has wide local and international support including from the Security Council⁴⁴ and other State parties⁴⁵ as well as local leaders⁴⁶, there seems to be pressure on territorial States and the UN not to appear to undermine the talks. Joaquim Chissano, the UN Special Envoy for Areas Affected by the Lord's Resistance Army, reportedly stated on 13 November 2007 that achieving an alternative form of justice rather than submitting to the ICC was a "delicate but not impossible prospect." He further stated that "the [ICC] had issued the indictments requested by the Ugandan Government but lacked the means to arrest the suspects... That... [an] "alternative" form of justice [was]

⁴³ "Bozize Probes LRA Incursion Reports", IWPR, 28 August 2007 (available at http://iwpr.net/index.php?apc_state=hen&s=o&o=l=EN&p=acr&s=f&o=338107 (last accessed 10 December 2007)).

⁴⁴ "Security Council Press Statement on Situation in Northern Uganda", 13 November 2007 (available at <http://www.un.org/News/Press/docs/2007/sc9167.doc.htm> (last accessed 10 December 2007)).

⁴⁵ On 11 January 2007, the Foreign Office of the UK issued a statement voicing that it is an imperative to tackle impunity but recognises this is "an extremely difficult issue" and it would be best if a deal could be reached that takes into account international justice and local needs. "African search for peace throws court into crisis", *Guardian*, 12 January 2007. In late March 2007, EU Special Representative for the African Great Lakes Region Roeland Van De Geer stated that the European Union will exert pressure on the countries blocking the Juba peace talks between the Uganda Government and the LRA. See EU to pressure States blocking Juba talks, *Sunday Vision*, 24 March 2007; The Secretary of State for International Development of the United Kingdom stated in November 2007 that the British government will continue to support and work for the peaceful resolution of this conflict and continue to give financial support to facilitate the peace talks. Regarding the top four LRA commanders and the International Criminal Court, the Secretary of State reportedly stated that Britain supports international laws and that at the moment the UK was focusing and waiting for the outcome of the Juba peace talks. "Uganda: Free Children, UK Tells LRA", *The Monitor*, Samuel O. Egadu, 27 November 2007 (available at <http://allafrica.com/stories/200711262098.html> (last accessed 10 December 2007)).

⁴⁶ "LRA rifts worry bishops", *The New Vision*, 28 November 2007 (available at <http://www.newvision.co.ug/D/8/13/599508> (last accessed 10 December 2007)); "Acholi Conference Calls for Early Resumption of the Juba Peace Talks", Danish Embassy Kampala, 16 March 2007 (available at <http://www.ambkampala.um.dk/en/menu/AboutUs/PressReleases/AcholiConferenceCallsForEarlyResumptionOfTheJubaPeaceTalks.htm> (last accessed 10 December 2007)); "Security Council encouraged by positive moves in Ugandan peace process", UN News Centre, 13 November 2007 (available at <http://www.un.org/apps/news/story.asp?NewsID=24645&Cr=uganda&Cr1=> (last accessed 10 December 2007)).

being negotiated as a way towards permanent peace.”⁴⁷ In this context, the OTP has found it necessary to repeatedly explain to all actors involved, including the UN, that the peace process could not justify in any way non-compliance with the obligation to arrest. Additionally, the OTP has reminded actors that in the past the LRA has started negotiations and used them to regroup and attack again

33. The Prosecutor met with the Secretary-General of the United Nations on three occasions in 2007: in January at the seat of the Court and in April and August in New York. At each meeting the Prosecutor raised the need to execute the arrest warrants against the LRA commanders. The Secretary-General referred to ongoing peace talks and the efforts by Joachim Chissano as well as the possibilities offered by traditional justice mechanisms and the applicability of the complementarity principle. On each occasion, the Prosecutor emphasized that arrest warrants had been issued by the Judges of the ICC and had to be implemented; other accountability mechanisms could be a solution for those LRA members not named in the arrest warrants. The Prosecutor stated that he had a strong case against the four individuals. In the event of an admissibility challenge by a Government or the suspects, an option that the OTP has received no direct information about, the Prosecutor would fight such a challenge, although the final decision would belong to the Judges. This position was expressed in the presence of Nicolas Michel, UN Legal advisor and focal point for ICC matters within the UN. On 3 December 2007, in his address to the Assembly of States Parties, the UN General Secretary urged “all [UN] Member States to do everything within their powers to assist in enforcing these warrants.”⁴⁸

⁴⁷ Press Conference by Special Envoy for Areas Affected by the Lord’s Resistance Army on Peace Talks Between Ugandan Government, Rebel Group,’ UN Press Conference, 13 November 2007 (available at http://www.un.org/News/briefings/docs/2007/071113_Chissano.doc.htm (accessed 10 December 2007)).

⁴⁸ “Cooperation is essential in determining effectiveness of International Criminal Court, Secretary-General tells States parties to Rome Statute”, UN Secretary General, 3 December 2007 (available at <http://www.reliefweb.int/rw/RWB.NSF/db900SID/EGUA-79IQ4L?OpenDocument> (last accessed 10 December 2007)).

34. The Prosecutor also met with Jean-Marie Guehenno, Under Secretary General of the UN, Head of the Department of Peacekeeping Operations (DPKO) on three occasions in 2007 and addressed the issue of MONUC possible role in support of an arrest. Under Secretary General Guehenno confirmed he was aware of the legal position and would follow up on the OTP request. He conveyed to the OTP that it would be helpful if member states of the UNSC made clear to the UN Secretariat that they wanted such action to be a priority in terms of resources, as a higher priority seemed to be given to the peace process.
35. In July 2007, upon request by Headquarters, MONUC took steps to establish an advance base in Dungu, south of the LRA's main base near Garamba National Park.⁴⁹ This deployment includes 80 Moroccan peacekeepers that are protecting a contingent of Indonesian engineers who are rehabilitating the airstrip in Dungu.⁵⁰ These logistical preparations and other additional deployments are being planned to apply military pressure on the LRA and to restrict their movements.⁵¹ Recent LRA defections to the MONUC in Dungu demonstrate that the very presence of MONUC changes the dynamics of the situation as it creates a safe haven for LRA members wanting to defect. On 2 December, the Prosecutor was informed by Under Secretary General Guehenno that efforts to reinforce MONUC presence would proceed.
36. The Prosecutor also met two times with Lynn Pascoe, Under Secretary General of the UN, Head of the Department of Political Affairs (DPA), who emphasized each time a preference for a solution based on national accountability mechanisms in Uganda and underlined the operational difficulties of arrests. The Prosecutor reiterated that the Office expected the full support of the UN.

⁴⁹ "UN troops deploy in northeast DRC to counter LRA rebels", AFP, 19 July 2007 (available at <http://www.monuc.org/News.aspx?newsId=15011> (last accessed 10 December 2007)); "Let's Make a Deal: Leverage Needed in Northern Uganda Peace Talks", Enough, 8 July 2007 (available at <http://www.enoughproject.org/node/59> (last accessed 10 December 2007)).

⁵⁰ See *supra*

⁵¹ UN to Help Flush Out LRA Rebels, New Vision, 17 September 2007 (available at <http://www.monuc.org/News.aspx?newsId=15422> (last accessed 10 December 2007)).

37. The Prosecutor also met with John Holmes, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, in April 2007 and with his deputy, Margareta Wahlstrom, in August 2007. The Prosecutor emphasised the need for executing the arrest warrants and ensuring proper control of the assistance to the Juba talks in order to prevent any financial aid from reaching the suspects.
38. The Prosecutor met with Special Envoy Chissano in The Hague on 22 January 2007. He had a phone conversation with him on 10 May. He shared with him the same message on the need to respect the integrity of the arrest warrants.
39. Finally, the Deputy Prosecutor, Fatou Bensouda, met in August with UN Deputy Secretary General Ashe-Rose Migiro and the Representative of the Congo, then President of the UNSC, on the eve of a UN Security Council meeting on Peace and security in Africa, and reiterated the same message.⁵²
40. On 20-23 September, the Prosecutor met with UNSC members in New York, Belgium, France, the UK, to discuss arrest warrants in relation to Darfur and Uganda. The Prosecutor asked them specifically to raise the issue of arrest warrants during the UNSC meeting at Heads of States level on 25 September on Security in Africa and in other meetings. Some UNSC member States followed up, the most prominent statement being the one made by the Prime Minister of Belgium Guy Verhofstadt : "an international arrest warrant has been issued by the ICC [against the top member of the LRA]. The time for talking is over... We know what Kony has done; we know what he is doing and we know where he is, and there is not any possible pretext for him not to be arrested. I therefore ask

⁵² "Deputy Prosecutor of the ICC to meet UN Deputy Secretary General and President of UN Security Council", 17 August 2007 (available at <http://www.icc-cpi.int/press/pressreleases/265.html> (last accessed 10 December 2007)); "Prosecutor of the ICC Meets with Secretary General of the United Nations", 5 April 2007 (available at <http://www.icc-cpi.int/press/pressreleases/238.html> (last accessed 10 December 2007)).

individually the members of the Security Council to do just that. We have the possibility; MONUC is in east Congo, and we know where Kony is." The Prosecutor met with Minister of Foreign Affairs Karel de Gucht on 23 November and was assured that Belgium would continue its efforts in the UNSC.

41. The Prosecutor also raises the issue of the arrest warrants in Northern Uganda in bilateral visits with states. He emphasized the need to promote regional cooperation to arrest through the Great Lake initiative in his visit to Tanzania in April 2007, including during a meeting with the Minister of Foreign Affairs. On 14 September 2007, the Prosecutor met with the Danish Foreign Minister in Copenhagen and asked the Danish authorities to be vigilant regarding the financial support Denmark was giving to the peace process through NGOs as aid could be diverted in favour of the suspects.⁵³ The Minister committed to enhance efforts to audit Danish assistance to the peace talks. In Canada on 11 October, during meetings organized with all departments within the Ministry of Foreign Affairs, including the Africa Director, the Prosecutor emphasized that the execution of the warrants was a legal obligation and requires the support of all states parties.
42. The issue was raised also with EU members states on 23 November when the Prosecutor addressed the Peace and Security Committee and noted that since the issuance of the arrest warrants "Joseph Kony, the first individual charged by the International Criminal Court, has received so much support that he was on the verge of becoming a regional leader. European and other States have financed food aid to the LRA...and (the LRA) would ... divert it in a number of ways. Through the financing of the talks, Joseph Kony seems to have received percentage of any allowance served to the negotiators.... it is essential that States

⁵³ "Media Advisory: ICC Prosecutor and Danish Foreign Minister to discuss cooperation and arrests", 13 September 2007 (available at <http://www.icc-cpi.int/press/pressreleases/272.html>) (last accessed 10 December 2007)).

are aware of such contradictions....forces in MONUC could be called upon to arrest people who might have bought their weapons with your money... We have to ensure enforcement of the Court's decisions even in situations where the international community is trying to achieve other objectives... Support can take a variety of forms ... public support; marginalization of the individuals sought...; tracing of their whereabouts; encouraging the planning and execution of arrest operations.... States should include, where feasible, provisions enabling cooperation within the mandate of peacekeeping missions; another option... is to create operational groups of relevant States and organisations to exchange information and coordination."⁵⁴

43. In regards to gathering information on the whereabouts and circumstances of the suspects, the OTP receives regular security updates from the GoU, UN and other sources, and has made 6 missions to Uganda and the Central African Republic during 2007. This information is used by the OTP to make additional requests for state cooperation on arrest related issues and to galvanise further cooperation on arrest.

Conclusion

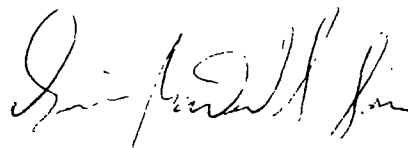
44. Consistent and explicit support of all States to the execution of the arrest warrants is still lacking. During the last ASP, no State Party referred directly to the need for execution of the arrest warrants against Joseph Kony and the other LRA commanders. On 13 November 2007, the Security Council in reference to the LRA issued a statement reiterating that those responsible for serious violations of international humanitarian law must be brought to justice.⁵⁵ However, the ICC is

⁵⁴ Speech on file with the OTP.

⁵⁵ Security Council Press Statement on Situation in Northern Uganda, 13 November 2007 (available at <http://www.un.org/News/Press/docs/2007/sc9167.doc.htm> (last accessed 10 December 2007)).

not specifically mentioned. Some states, even non-states parties, have called for coercive measures to arrest, but link it to lack of progress in the peace talks.⁵⁶

45. The OTP will proceed to reiterate to all actors that there is no excuse not to implement the arrest warrants. There might be operational difficulties for the territorial states and MONUC but the legal obligation to arrest must remain a prevailing consideration and all States Parties should convey this message consistently to the territorial States and the UN. This is still not the case.
46. Recent events including the reported divisions within the LRA and the defections confirm that the approach followed – insist publicly on the 4 arrest warrants - is opening new opportunities and appear to be contributing to a renewed effort on the part of States to cooperate in effecting the arrest warrants.
47. The OTP respectfully submits this information on the status of the execution of the arrest warrants, with the hope that the information will assist the Chamber in advance of the 11 December status conference.



Luis Moreno-Ocampo
Prosecutor

Dated this 10th day of December 2007

At The Hague, The Netherlands

⁵⁶ On 5 September 2007, US Assistant Secretary of State for African Affairs, Jendayi Frazer held talks with President Museveni. Following the talks Frazer stated that the US would support regional efforts to apprehend LRA rebels if the talks failed : for the rebels “the peace talks are their way out. The other way is a renewed effort to apprehend them, and we would certainly support those efforts.” See “US Backs Action against Kony”, Institute For War And Peace Reporting, 11 September 2007 (available at http://iwpr.net/index.php?apc_state=hen&s=o&o=l=EN&p=acr&s=f&o=338589 (last accessed 10 December 2007)).