



Original : English

No.: ICC-02/04-01/05
Date: 21 October 2008

PRE-TRIAL CHAMBER II

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

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

Public Document

**Decision initiating proceedings under article 19, requesting observations and
appointing counsel for the Defence**

Decision/Order/Judgment to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor
Mr Luis Moreno Ocampo
Ms Fatou Bensouda

Counsel for the Defence
Mr Jens Dieckmann

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**
Ms Paolina Massidda

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

States Representatives
The Government of the Republic of
Uganda

Amicus Curiae

REGISTRY

Registrar
Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER II (the “Chamber”) of the International Criminal Court (the “Court”);

RECALLING the warrant of arrest for Joseph KONY, issued by the Chamber on 8 July 2005, as amended on 27 September 2005,¹ and the warrants of arrest issued for Vincent OTTI,² Okot ODHIAMBO,³ and Dominic ONGWEN⁴ on 8 July 2005 (the “Warrants”), in the case of the *Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen* (“the Case”);

RECALLING the request for arrest and surrender of Joseph KONY, dated 8 July 2005, as amended on 27 September 2005,⁵ and the requests for arrest and surrender of Vincent OTTI,⁶ Okot ODHIAMBO⁷ and Dominic ONGWEN⁸ to the Republic of Uganda, dated 8 July 2005;

NOTING the “Agreement on Accountability and Reconciliation Between the Government of the Republic of Uganda and the Lord’s Resistance Army/Movement Juba, Sudan” signed on 29 June 2007 (the “Principal Agreement”);

NOTING the “Annexure to the Agreement on Accountability and Reconciliation signed between the Government of the Republic of Uganda and the Lord’s Resistance Army/Movement” on 19 February 2008 (the “Annexure”);

NOTING the “Request for information from the Republic of Uganda on the status of execution of the Warrants of Arrest”, dated 29 February 2008;⁹

¹ ICC-02/04-01/05-53.

² ICC-02/04-01/05-54.

³ ICC-02/04-01/05-56.

⁴ ICC-02/04-01/05-57.

⁵ ICC-02/04-01/05-29-US-Exp, reclassified as public pursuant to Decision ICC-02/04-01/05-135.

⁶ ICC-02/04-01/05-13-US-Exp, reclassified as public pursuant to Decision ICC-02/04-01/05-135.

⁷ ICC-02/04-01/05-15-US-Exp, reclassified as public pursuant to Decision ICC-02/04-01/05-135.

⁸ ICC-02/04-01/05-16-US-Exp, reclassified as public pursuant to Decision ICC-02/04-01/05-135.

⁹ ICC-02/04-01/05-274.

NOTING the “Report by the Registrar on the Execution of the ‘Request for Information from the Republic of Uganda on the Status of Execution of the Warrants of Arrest’”, dated 28 March 2008,¹⁰ and the Response of the Acting Solicitor General of the Republic of Uganda annexed to the Report (the “Ugandan First Response”);¹¹

NOTING the “Request for further information from the Republic of Uganda on the status of execution of the Warrants of Arrest”, dated 18 June 2008;¹²

NOTING the “Report by the Registrar on the Execution of the ‘Request for Further Information from the Republic of Uganda on the Status of Execution of the Warrants of Arrest’”, dated 10 July 2008,¹³ and the Response of the Acting Solicitor General of the Republic of Uganda annexed to the Report (the “Ugandan Second Response”);¹⁴

NOTING the Single Judge’s “Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06” , filed on 13 August 2007 in the record of the situation in Uganda (the “Situation”)¹⁵ and in the record of the Case¹⁶, whereby the Single Judge *inter alia* granted applicants a/0090/06, a/0098/06, a/0112/06, a/118/06, a/0119/06 and a/0122/06 the status of victims in the Case and requested the Registrar to assist them in the appointment of a common legal representative;

¹⁰ ICC-02/04-01/05-286.

¹¹ ICC-02/04-01/05-286-Anx2.

¹² ICC-02/04-01/05-299.

¹³ ICC-02/04-01/05-305.

¹⁴ ICC-02/04-01/05-305-Anx2.

¹⁵ ICC-02/04-100-Conf-Exp; ICC-02/04-101.

¹⁶ ICC-02/04-01/05-251-Conf-Exp; ICC-02/04-01/05-252.

NOTING the “Decision on legal representation of Victims a/0090/06, a/0098/06, a/0101/06, a/0112/06, a/0118/06, a/0119/06 and a/0122/06”, filed on 15 February 2008 in the record of the Situation¹⁷ and in the record of the Case;¹⁸

NOTING the “Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06”,, filed on 17 March 2008 in the record of the Situation¹⁹ and in the record of the Case,²⁰ whereby the Single Judge *inter alia* granted applicants a/0094/06, a/0095/06, a/0103/06, a/0117/06, a/0120/06, a/0121/06, a/0123/06 and a/0124/06 the status of victims in the Case, and requested the Registrar to assist them in the appointment of a common legal representative;

NOTING articles 17, 19(1) and 19(3) of the Statute of the Court (the “Statute”), rules 58(2) and 59 of the Rules of Procedure and Evidence of the Court (the “Rules”), and regulations 76(1), 80(1) and 80(2) of the Regulations of the Court (the “Regulations”);

NOTING further that, pursuant to article 19(1) of the Statute, the Court may, on its own motion, determine the admissibility of a case in accordance with article 17;

NOTING also the decision dated 13 July 2006 (the “Appeals Chamber Decision”), whereby the Appeals Chamber “accepts that the Pre-Trial Chamber may on its own motion address admissibility”;²¹

NOTING that the Appeals Chamber Decision held that, “when deciding on an application for a warrant of arrest in *ex parte* Prosecutor only proceedings”, the Pre-

¹⁷ICC-02/04-117.

¹⁸ ICC-02/04-01/05-267.

¹⁹ ICC-02/04-124-Conf-Exp ; ICC-02/04-125.

²⁰ ICC-02/04-01/05-281-Conf-Exp ; ICC-02/04-01/05-282.

²¹ ICC 01/04-169 (reclassified as public pursuant to Decision ICC-01/04-538-PUB-Exp), paragraph 52.

Trial Chamber has to exercise its discretion on the matter “only when it is appropriate in the circumstances of the case bearing in mind the interests of the suspect”;²²

NOTING that the Annexure provides for the establishment of a special division of the High Court of Uganda (the “Special Division”), entrusted with the task of “try[ing] individuals who are alleged to have committed serious crimes during the conflict” in Uganda²³ ;

NOTING that the Annexure further provides that the Government of Uganda shall ensure that serious crimes committed during the conflict are addressed by the Special Division; traditional justice mechanisms; and any other alternative justice mechanisms established under the Principal Agreement;²⁴

CONSIDERING that both the Ugandan First and Second Response acknowledge the provisions in the Principal Agreement and in the Annexure providing for the establishment of the Special Division;

CONSIDERING, in particular, that the Ugandan First Response refers expressly to the relationship between the creation of the Special Division and the jurisdiction of the International Criminal Court over the Case by stating that the Special Division “is not meant to supplant the work of the International Criminal Court” and that individuals for whom a warrant has been issued by the latter “will have to be brought before the special division of the High Court for trial”;

CONSIDERING therefore that a determination by the Chamber on the admissibility of the Case in accordance with articles 19(1) and 17 of the Statute is appropriate in light of the circumstances in order to ensure the proper application of the relevant

²² Ibidem.

²³ Clause 7.

²⁴ Clause 23.

provisions concerning admissibility to current and future proceedings in the Situation;

NOTING that, in the context of the proceedings leading to such determination, the Republic of Uganda as well as victims who have communicated with the Court in relation to the Case or their legal representatives, are entitled, pursuant to rule 59 (1) of the Rules, to receive from the Registrar information on the question which has arisen and to make written observations or representations in accordance with article 19(3) of the Statute and rule 59(3) of the Rules within a time limit set by the Chamber;

CONSIDERING that, for the purpose of the present proceedings, "victims who have communicated with the Court or their legal representatives" means: a) those victims who have been admitted to participate in the Case or their legal representatives; and b) those applicants who have submitted applications to be admitted to participate with respect to the Case or their legal representatives;

NOTING that, according to rule 58(2) of the Rules, a Chamber acting on its own motion as provided for in article 19(1) "shall decide on the procedure to be followed and may take appropriate measures for the proper conduct of the proceedings";

CONSIDERING that, in order to preserve the fairness of the proceedings, the Prosecutor and the persons for whom the Warrants have been issued shall also be given the opportunity to submit written observations on the matter;

NOTING regulation 76(1) of the Regulations, which provides that the Chamber, "following consultation with the Registrar, may appoint counsel in the circumstances specified in the Statute and the Rules or where the interests of justice so require";

CONSIDERING that, in the present circumstances, where none of the persons for whom an arrest warrant has been issued is yet represented by a defence counsel, appointment of a counsel for the defence to represent those persons within the context and for the purposes of the present proceedings is in the interest of justice;

HAVING REGARD THERETO AND FOR THESE REASONS,

DECIDES to initiate proceedings under article 19(1) of the Statute;

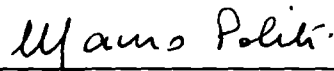
ORDERS the Registrar to inform the Republic of Uganda of the initiation of the present proceedings;

ORDERS the Registrar to inform the victims who have already communicated with the Court with respect to the Case or their legal representatives of the initiation of the present proceedings;

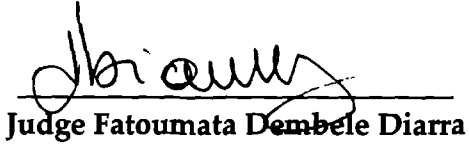
APPOINTS Mr Jens Dieckmann as counsel for the Defence, within the context and for the purposes of the present proceedings;

INVITES the Republic of Uganda, the Prosecutor, the counsel for the Defence and victims who have already communicated with the Court with respect to the Case, or their legal representatives, to submit their observations on the admissibility of the Case by 10 November 2008.

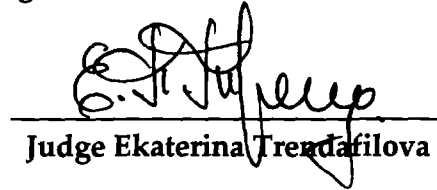
Done in English and French, the English version being authoritative.



Judge Mauro Poli
Presiding Judge



Judge Fatoumata Dembele Diarra



Judge Ekaterina Trendafilova

Dated this Tuesday, 21 October 2008

At The Hague, The Netherlands.