

1 International Criminal Court.
2 Pre-Trial Chamber II Situation in Uganda, Case
3 Number 1 ICC-02/04-01/05.
4 Status Conference. Monday 3rd October 2005 -- Closed session.
5 Decision ICC-02/04-01/05-328 reclassifies this transcript as “confidential ex parte”
6 OTP and Registry only. The hearing starts at 3.10 pm.
7 THE USHER: All rise. The International Criminal Court is
8 now in session. Please be seated.
9 MR THE PRESIDING JUDGE SLADE: Madam Registrar, please call
10 the matter the subject of these proceedings.
11 THE REGISTRAR: Your Honour, this is situation in Uganda
12 Case No.1, No. ICC 02/04-01/05.
13 MR THE PRESIDING JUDGE SLADE: Thank you. Madam Prosecutor,
14 kindly announce yourself and your colleagues for the
15 record.
16 MS BENSOU DA: Thank you, Mr President, your Honours.
17 Fatou Bensouda, Deputy Prosecutor, appearing
18 together with Christine Chung, Senior Trial Lawyer; Eric
19 MacDonald, Trial Lawyer; Ibrahim Yillah, Associate Trial
20 Lawyer; Matthew Brubacher, Associate Analyst, Jurisdiction,
21 Complementarity and Co-operation Division, Martin Witteveen, Team
22 Leader of the JCCD; and Cristina Ribeiro, Investigator in the JCCD.
23 MR THE PRESIDING JUDGE SLADE: Mr Registrar, would you do
24 likewise and kindly announce yourself and your
25 colleagues for the record.

1 MR DUBUISSON: Certainly, Mr President, judges. I am
2 accompanied for this session by (Redacted) also
3 the Protection Officer from the Victims and Witnesses
4 Unit; and there is (Redacted) who is the assistant
5 legal officer; and myself, Marc Dubuisson. I am the
6 Head of the Division of Court Services representing the
7 Registrar for this session. Thank you.

8 MR THE PRESIDING JUDGE SLADE: Thank you very much. This is
9 a status conference by way of closed session of the
10 Pre-Trial Chamber II, called for by the Chamber under
11 its Decision dated 27th September 2005.

12 As asked for in the Decision, we acknowledge the
13 attendance of members of the Office of the Prosecutor,
14 the representatives of the Registrar of the Court and of
15 the Victims and Witnesses Unit.

16 The Chamber has found it necessary to hold this
17 status conference because of the importance and the
18 seriousness of the issues involved, and the implications
19 associated with those issues.

20 The issues were first canvassed in the original
21 application by the Prosecutor, dated 6th May 2005; and,
22 as requested in that application, the decisions of the
23 Chamber and all other documents issued and related to
24 the proceedings have thereafter been placed under seal.
25 Issues for the security and protection of victims and

1 witnesses which underlie the need for sealing have since
2 become the focus of attention, in particular in the
3 Prosecutor's application for unsealing dated
4 9th September 2005, and the Prosecutor's urgent
5 application for authorisation to disclose information
6 dated 26th September.

7 The Prosecutor's applications in turn have of course
8 been the subject of the Chamber's Order for the
9 Provision of Additional Information made on the 21st day
10 of September 2005, and of the Chamber's decision last
11 week, on the 27th, on the Prosecutor's urgent
12 application.

13 This status conference is limited and specific of
14 purpose. As set out in the Decision of last week, the
15 Chamber seeks firstly from the Office of the Prosecutor,
16 as well from the Victims and Witnesses Unit, a report on
17 the status of protective measures for victims and
18 witnesses; secondly, from the Registrar in particular,
19 information on the transmission of the requests for
20 arrest and surrender; thirdly, from the Office of the
21 Prosecutor, in particular, information on the executions
22 of the warrants of arrest, whether in the territory of
23 the Republic of Uganda or the Democratic Republic of the
24 Congo, and/or the Republic of Sudan; fourthly, from the
25 Office of the Prosecutor in particular, additional

1 information and clarification regarding the Prosecutor's
2 application for unsealing, and the proposed redactions.

3 Madam Prosecutor, Mr Registrar, as we have done in
4 the past, we propose that the judges pose a range of
5 specific questions to which we invite your responses.
6 We think it will be convenient if, to each specific
7 question, the Prosecutor may wish to respond first,
8 followed, as may be relevant, by the Registrar and/or
9 the Victims and Witnesses Unit. I will commence such
10 questions, and in time will invite their Honours to ask
11 additional and supplemental questions.

12 As I turn to the questions, I seek the co-operation
13 of all speakers in these proceedings on the matter of
14 delivery speed. We need to ensure a reasonable rate of
15 delivery to allow for the transcript to capture
16 completely and accurately what is said in this
17 courtroom.

18 I want now to pose the following question to the
19 Office of the Prosecutor, and to the Victims and
20 Witnesses Unit, namely: what is the current status of
21 implementation and completion of the overall security
22 plan for the protection of witnesses and victims? There
23 is a related question which might as well be dealt with
24 at the same time, namely: we noted in paragraph 5 of the
25 Prosecutor's Provision of Additional Information that

1 the only measures remaining to be completed under the
2 overall plan are the preventive relocation of certain
3 victims and witnesses. I think there are (Redacted) persons
4 involved.

5 The question is: have these measures now been
6 implemented? So this is the first question, Madam
7 Prosecutor. May I invite you to respond.

8 MS BENSOUDA: Mr President, your Honours, for the purposes
9 of this afternoon's proceedings, Miss Christine Chung
10 will be taking questions from the bench and where
11 necessary will be assisted by Eric MacDonald, the Trial
12 Lawyer.

13 MR THE PRESIDING JUDGE SLADE: Miss Chung.

14 MS CHUNG: Mr President, I am pleased to report on behalf of
15 the Office of the Prosecutor that after consultations
16 with the Victims and Witnesses Unit, we have completed
17 the steps of the overall security plan, and in
18 particular that the (Redacted) that were
19 contemplated and about which we had written to the
20 Chamber in the past have been accomplished.

21 There were, I believe, (Redacted) witnesses referred to
22 in our Provision of Additional Information to the
23 Chamber. (Redacted).
24 (Redacted)
25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted). So we continue to monitor

8 that situation.

9 The other (Redacted) witnesses: (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted). Of all the victim witnesses who

14 might come into attention because of the release of the

15 warrants, or following the release of the warrants, (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 Obviously what I say today will be in the nature of
8 a supplementation, because some of the measures have
9 been described to the Court before. But I am pleased to
10 describe the progress that has been made in the months
11 since we last convened. For the past four months, as
12 the Chamber is aware, essentially all of the efforts of
13 the OTP in the field, and additionally of VWU on this
14 case, on this situation, have been entirely devoted to
15 witness protection and victim protection measures. So
16 investigative measures have essentially been stopped
17 while we work exclusively on the issue of victim and
18 witness protection.

19 To quantify this a little bit for the Court, there
20 have been 150 days approximately since we submitted the
21 arrest warrant application. 80 of those days have been
22 spent with a team -- at least one team on the ground in
23 Uganda from the OTP; often -- usually joined by members
24 of VWU. Each team consists of two people, so that
25 effectively means that there have been 160 person days

1 spent solely on this issue.

2 Our approach has been, in consultation with VWU, to
3 assume public knowledge of the warrants around the
4 planning. And we did that for several reasons. One is
5 that we felt that, even back in June, when leaks began,
6 we felt that we could not control the information that
7 might become available, or might become leaked about the
8 investigation, and therefore that it was the best
9 cautionary measure to assume public knowledge of the
10 warrants.

11 In addition, we knew that we could not control
12 speculation about the scope of the investigation, and
13 that if the LRA or other parties wanted to know what we
14 had done investigatively, or investigative focus, that
15 could be determined if someone made enough of an effort.
16 So again that pointed toward assuming there would be
17 public knowledge of the warrants one day, and planning
18 around that scenario.

19 Finally, of course, we cannot control the time at
20 which someone will be apprehended. And when someone is
21 apprehended the arrest warrant and the application, we
22 assume, will become available to defence counsel. And
23 because we do not know when someone might be
24 apprehended, again we thought that the cautious way to
25 proceed was to assume that the warrants would become

1 public, and to plan the "necessary and appropriate" --
2 to use this Court's phrase -- measures that should be
3 taken in advance of that event.

4 The steps that we have completed are the ones that
5 we believe are necessary and appropriate, and we are in
6 agreement, as we understand it, with VWU that those
7 measures are now fully in place.

8 The context here I think is important, before I get
9 to the steps that have been taken. It is important to
10 understand the overall security situation in northern
11 Uganda, which is very much different than the situation
12 that is described in the warrant application.

13 Since May 2004, which is the last event reported in
14 our warrant application, the security situation in
15 northern Uganda has improved dramatically, and in fact
16 the crime levels now are at a much, much lower rate than
17 they have been in either of the prior two years. So if
18 you took the area from September now back a year
19 to September, or even June to June, the numbers of
20 killings and abductions on a monthly basis are in the
21 tens, or maybe as high as 50 or 60 at the most active
22 times. Whereas at the time we prepared the warrant
23 application the levels were more like up to and over
24 hundreds in a month.

25 So the security situation overall has improved

1 a great deal. There have been no large scale attacks
2 directly on IDP camps since June 2004. This
3 characteristic of LRA attacks, which was very prevalent
4 in the time period that we investigated, has now become
5 something of a thing of the past.

6 Even in the last three months, as we have been
7 tracking LRA activities through our multiple sources,
8 which include (Redacted)
9 (Redacted) we essentially now have information fed
10 in on a weekly basis about where the LRA is active and
11 what they are doing.

12 In the last three months there has been a further
13 decrease, and in fact in this month there are very few
14 killings and very few abductions. But the picture
15 from July, August and September is about as good as we
16 have seen it since we have been involved in this case,
17 since January of 2004.

18 The sources that we have, including (Redacted) agree
19 that LRA capability is significantly degraded right now.
20 The image that was true at the time we were working on
21 the warrant -- which is large, large groups, hundreds of
22 LRA attacking camps wholesale -- is not the way that LRA
23 is operating now. They are operating in very small
24 groups, scattered about. They actually have been
25 ordered by their leaders to try to move in small teams

1 so they are not as easily detected and caught. The
2 types of attacks are small level ambushes or attacks for
3 food or money or weapons on the outskirts of the camps.
4 There are road ambushes, things of that nature. But the
5 character of the attacks also has lessened in gravity.

6 Obviously it is significant now that the very
7 highest commanders now are scattered across three
8 countries. This also impairs the ability of the LRA to
9 plan without detection, and is another thing that we
10 consider a positive factor right now in the overall
11 security situation.

12 Through this I have emphasised how the security
13 picture in northern Uganda is very good. But also, as
14 your Honours are already aware, it is also dynamic.
15 And, as we pointed out in our provision of additional
16 information, the possibility -- although the trend is
17 very, very good, and the moment is very, very good,
18 there is also always the possibility the dynamic will
19 change. For example, one of the things there is concern
20 about now is: what happens if LRA comes back from DRC
21 and they are re-armed, or they have linked with other
22 groups? Then it could be a very sudden situation where
23 we are again looking at a degraded security scenario.

24 So I would emphasise to the Court that one of the
25 factors in our mind has been capitalising on a time

1 where it looks very, very good from a security
2 standpoint, relative to the other times that there have
3 been. Obviously there is an ongoing conflict, and the
4 risk will never be zero. But in terms of the general
5 security scenario that is presented now, it is quite
6 good relative to any other time we have been involved in
7 the case.

8 In terms of the precise steps that we took in
9 connection with witness and victim protection, again
10 this will be supplemental, but from the very
11 beginning -- and I should clarify that the standpoint of
12 VWU is very much that the overall security plan -- what
13 VWU terms "the overall security plan" -- is in place,
14 and it has been in place for some time. Because the
15 idea is that, starting from the very beginning, we as
16 the OTP minimise the use of witnesses and victims who
17 were in dangerous residences, in other words usually (Redacted)
18 (Redacted). So the measures we took since the beginning, if
19 there was any other way to prove it we tried not to use
20 victim witnesses; and, secondly, through a protocol
21 developed with VWU, we essentially eliminated many
22 potential witnesses because they lived in unsafe areas.
23 So most of our witnesses (Redacted). And
24 I do want to emphasise that point. Our witnesses are
25 mainly located in areas that were adjudged to be safer

1 from the beginning, when we interviewed them. So those
2 measures have been undertaken since the very beginning
3 of the investigation.

4 (Redacted) which is something that
5 your Honours have enquired about in the past, has now
6 been tested in (Redacted). The (Redacted) are
7 named in our Application of the Provision of Additional
8 Information. (Redacted)
9 (Redacted). So we have
10 completed really to almost 100 per cent coverage of our
11 witnesses the (Redacted).

12 (Redacted) and we were present for them,
13 and all the results were adjudged to be satisfactory,
14 and in some cases better than satisfactory. We also, as
15 we mentioned in our application to the Court, did as
16 a follow-up to those sessions, give constructive
17 criticism about how the response could be even better
18 than it was the testing. And obviously VWU continues to
19 monitor, and will continue to roll out testing on a
20 periodic basis. So all of that went very positively.

21 With respect to the (Redacted) one
22 thing that we have managed to do as a result of all the
23 re-interviewing is again to advise our witnesses of (Redacted)
24 (Redacted), so that we are sure that either if
25 someone tried they were able to get through, or that

1 they know all the updated information that will allow
2 them (Redacted).

3 And what we have found so far is that (Redacted)
4 (Redacted). But now we have better assurances
5 that everyone has the most up-to-date information and
6 that (Redacted).

7 With respect to (Redacted) and this is an issue
8 of -- really, as I just mentioned, it is mainly an (Redacted)
9 (Redacted)
10 (Redacted)

11 In terms of camp security, your Honours were aware
12 that we had arranged a co-operation agreement which
13 allowed us to seek the aid of (Redacted)
14 on this point. (Redacted) or a matter of security
15 of the overall civilian population of northern Uganda is
16 obviously a responsibility of the Ugandan Government,
17 first and foremost. And what we have done is we have
18 had consultations with (Redacted)
19 (Redacted) and we have had meetings
20 as high as with the Minister of Defence of the Government
21 of Uganda. We travelled to meet him in Kampala, and he
22 travelled to the Hague for a weekend meeting with the
23 Prosecutor. Firstly we have advised them of the view
24 that it is their primary responsibility. They have been
25 advised of the locations that are in the warrants. In

1 fact, they knew those locations through RFAs already,
2 but we reinforced to them that they were responsible for
3 protecting these areas. And they have undertaken to
4 provide the protection, and have represented that they
5 have taken the protective measures that are necessary
6 and appropriate in their view, in light of looking
7 forward to public disclosure of the warrants.

8 We discussed the matter of public disclosure of the
9 warrants with the Government of Uganda as well, in
10 hypothetical terms, and their preference was very much
11 that the warrants be public for clarity; to remove
12 speculation about places that were not the focus of the
13 investigation, that LRA might mistake as being places of
14 the investigation.

15 So there are a number of factors, but after
16 extensive consultations they have agreed to take the
17 measures, and they have represented to us that they have
18 taken the measures.

19 What we have done on our side is set up a very
20 extensive network to monitor the progress of those
21 security measures. So from sources (Redacted)
22 from which we can now get almost daily reporting, in
23 both the (Redacted)
24 which covers the areas of northern Uganda which are of
25 interest to us. But we also have added to that very

1 good reporting from (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 So that, for example, in advance of this hearing we
6 were able to reach out to the network and get a round-up
7 of exactly what was happening in terms of (Redacted).

8 What that enables us to do is: we know there are
9 improvements that have been made on the (Redacted)
10 then we can confirm that those improvements are either
11 in place or out of place, and whether or not they are
12 appropriate to what we see to be the security situations
13 in those areas.

14 I should emphasise that another aspect of the (Redacted)
15 (Redacted) security that has been very positive is that, since
16 the attacks that took place in the warrant, (Redacted) has
17 taken structural changes to the way that they approach
18 (Redacted) protection. For example, the formation that was
19 typically used by the (Redacted) at the time of the attacks in
20 our warrant application was a situation where the (Redacted)
21 (Redacted)
22 (Redacted)

23 If your Honours remember the pictures, the diagrams
24 of the attack sites, the (Redacted) detach was almost
25 typically right at the edge of (Redacted). It was

1 determined that that was not safe. All that happened
2 then was that if LRA attacked, if they overran the
3 detach, civilians were caught in the middle. So now the
4 (Redacted) has changed that tactic and they deploy their
5 detaches a further distance out, but with perimeter
6 guarding that is more effective, or at least more
7 effective in the judgment of the context that we have.

8 In addition, there are mobile forces who reinforce
9 the (Redacted) areas. There are other things I could
10 describe, but the essential bottom line here is that all
11 the reporting that we have, from the variety of sources
12 I described, agree that the (Redacted)
13 right now is much better than it was a year or a year
14 and a half ago.

15 In fact, the results are seen in the crime
16 statistics I mentioned earlier. Based on all the
17 information that we have we think (Redacted) is doing the
18 job it needs to do to keep the (Redacted). Again,
19 a highly dynamic situation, but there is nothing we
20 could say at this point in terms of a criticism of what
21 they are doing as a matter of managing (Redacted).

22 And of course it is important to recall, and we have
23 paid a fair amount of deference to this: they do not
24 just protect the (Redacted) that are in our warrant
25 application. Of course they are responsible for

1 protecting hundreds (Redacted). So we have been
2 reluctant to suggest this or that because we are aware
3 that every time we want to shift a resource somewhere,
4 it will mean taking a resource away from someplace else.
5 That is why we really shifted to a monitoring function,
6 and tried to determine if there were deficiencies in the
7 system. And there are none that we can see now.

8 In terms of --

9 MR THE PRESIDING JUDGE SLADE: Could I just stop you there,
10 and ask you a question. You say that the (Redacted)
11 is more an issue for (Redacted).
12 Is that generalised to (Redacted)-- and there
13 seems to be hundreds of it? But we are concerned with
14 the (Redacted) that are referred to in the
15 Prosecutor's application. Is that statement drawing
16 a marked distinction between (Redacted)
17 relative to the security (Redacted) of any difference in
18 relation to the (Redacted) that are subject to the
19 ... It appears to me that there ought to be
20 a difference.

21 MS CHUNG: Yes, Mr President, there is one. Maybe not as
22 great as the Court might anticipate. But the attack
23 sites, when you limit it to the (Redacted) there are (Redacted)
24 (Redacted)
25 (Redacted)

1 It is true, some of our witnesses (Redacted)
2 (Redacted). Again, though,
3 I have to cast my mind over -- we made a conscious
4 effort, for example, to pick witnesses that lived (Redacted)
5 (Redacted) are generally safer than the camps. There
6 are witnesses who are (Redacted) I do not want
7 to overstate the case. But I think as a general rule
8 there are probably (Redacted) than your
9 Honours might imagine absent this presentation.
10 The issue of (Redacted) is more really an issue
11 (Redacted). And I guess another relevant factor
12 here is: LRA has now moved to the point where it has
13 sort of withdrawn from all the areas that were at issue
14 in our warrant application. Now all the LRA activity is
15 very much focused in Kitgum and Pader districts. (Redacted)
16 (Redacted)
17 (Redacted)
18 (Redacted)
19 (Redacted)
20 (Redacted)
21 (Redacted) that area also has been (Redacted) for a
22 very long time now.
23 So the number of witnesses who now (Redacted)
24 that are considered relatively unsafe areas is very
25 (Redacted) in fact, (Redacted)

1 (Redacted).

2 MR THE PRESIDING JUDGE SLADE: Thank you. We do not want to
3 stray too far, and we do not want to interrupt your
4 stride, as it were, but I think Judge Diarra would like
5 to ask a question also at this point.

6 Judge Diarra, please.

7 JUDGE DIARRA (interpretation): We remain in the same
8 framework, Madam Deputy Prosecutor. You said a number
9 of kidnappings were reduced. I would like to know if
10 the same areas are targeted, or if these kidnappings are
11 perpetrated indifferently throughout the country?

12 MS CHUNG: The areas of kidnappings and abductions now are
13 limited to Kitgum and Pader districts, and in fact very
14 much limited at this point to Pader district. So the
15 (Redacted)

16 (Redacted)

17 If you were looking at a map -- we map the LRA
18 incidents on a weekly basis, and you can actually see
19 the shrinkage of how they have been pushed back into a
20 very, very central northern location. What that means
21 is that if you look at (Redacted)-- we
22 also have the ability to map this -- (Redacted)
23 (Redacted) and
24 certainly not at the same level of attacks as when the
25 warrant application was drafted.

1 The only other points I had with respect to the
2 overall security plan is that, as your Honours are
3 aware, we have done extensive security assessments of
4 nearly all the witnesses, any witness who might even
5 arguably be at risk. The only witnesses who were free
6 of re-interviewing on security issues were the ones that
7 are like (Redacted). So
8 really anybody who was anywhere out (Redacted) was
9 re-interviewed.
10 (Redacted)
11 (Redacted)
12 (Redacted)
13 (Redacted)
14 So we are very confident at this point that our contacts
15 with our witnesses and victims is very good. And in
16 fact we are at the point now where they (Redacted) if they
17 have any small thing to report.
18 So it is a bit of an intangible thing, but it is
19 something that demonstrates to us that we are at
20 a higher level of preparedness than we have been in the
21 past.
22 (Redacted)
23 (Redacted)
24 (Redacted) and those questions we can also answer,
25 but I have given the first level of information about

1 that.

2 So as a summary, recognising that zero risk is not
3 really an attainable goal here, unless we decide that we
4 are never going to unseal the warrants in a conflict
5 situation, we have undertaken to manage all the risks
6 that we foresaw, and we believe that we are prepared,
7 and certainly that the work that has gone into reaching
8 this stage, the stage where we can report to the Court
9 on this serious and important matter, that we are ready,
10 that we have reached that point. And we feel good about
11 the time that we have devoted to it, we feel that the
12 efforts have paid off. We have very good information
13 now, I think possibly better information than almost
14 anybody about movements of the LRA and the corresponding
15 measures taken by the UPDF in response to that.

16 So for all those reasons we continue to request that
17 the unsealing be ordered to take place as soon as is
18 practicable. Your Honours are aware that we had
19 requested the date of this Wednesday. We have
20 maintained the state of preparedness for that date. If
21 there is any possibility of retaining that date we would
22 continue to request it. But obviously we recognise the
23 constraints that the Court operates under.

24 So thank you, your Honour.

25 MR THE PRESIDING JUDGE SLADE: Thank you very much. Now may

1 I turn to the Victims and Witnesses Unit.

2 MR DUBUISSON (interpretation): Mr President, distinguished

3 members of the Court, I will give the floor to Christian

4 O'Brien, who is the Protection Officer for the Unit.

5 MR O'BRIEN: Mr President, your Honours, thank you for the

6 opportunity to address you on this point. But basically

7 I do not have very many comments, apart from the fact to

8 say that we concur with the comments of Ms Chung when

9 she was discussing the overall protection plan for

10 Uganda.

11 There are just a couple of comments that I would

12 like to add, and that is that the Victims and Witnesses

13 Unit, and in particular myself, has worked very closely

14 with the Uganda investigation team almost from the very

15 first missions. So much of the protection plans that

16 have been put in place have been organised together, and

17 by mutual agreement.

18 The investigation team has consulted us, where

19 appropriate, with regards to protection of the victims

20 and witnesses, and we believe that the protection

21 systems in place here at the moment are appropriate for

22 us to continue with our work down there.

23 As I say, we work in good co-operation; our

24 capability on the ground is improving, with increasing

25 in staff; the (Redacted) and will

1 continue to be monitored by our staff in the field.

2 At this stage, if there is anything particular that
3 you wanted to know about the systems, I am very happy to
4 answer it, but effectively we concur with the comments
5 of Miss Chung.

6 MR THE PRESIDING JUDGE SLADE: In terms of concentration of
7 these measures, I am trying to pursue the distinction
8 between the camps and areas out of the camps. The
9 witnesses -- (Redacted)
10 (Redacted)

11 I believe. In terms of the concentration of these
12 protective measures, where are your efforts aimed at?
13 Just give us some idea.

14 MR O'BRIEN: The measures, and in particular we can talk
15 (Redacted), is geared towards
16 where the witnesses are (Redacted). So effectively if
17 there is a witness living in (Redacted), (Redacted)
18 (Redacted).
19 (Redacted)
20 (Redacted)
21 (Redacted)
22 (Redacted). And they were the systems that we tested
23 in August and in September.

24 MR THE PRESIDING JUDGE SLADE: All right, thank you. Let me
25 move on to a second line of questions for the

1 Prosecutor; and then, as may be necessary, the Victims
2 and Witnesses Unit, please.

3 Do the recent developments in Uganda and the DRC,
4 including the movements of members of the LRA, create
5 new risks and additional needs for the protection of
6 victims and witnesses? You may have reflected on some
7 of these in your first answer, but I just wanted to ask
8 you specifically about this movement of people, and this
9 new development, whether it has raised new security
10 issues. If so, how are these security issues being
11 addressed, please?

12 MS CHUNG: Mr President and your Honours, on balance we see
13 the recent developments to be positive from a security
14 standpoint. Now, I would start by saying that this
15 movement of the group of LRA into DRC was totally
16 unprecedented. We did not foresee it; I do not think
17 anybody could have predicted it.

18 The positive aspects are that (i) it breaks off
19 somebody who is very, very much an operational leader
20 and a high advisor to Joseph Kony, and puts him in
21 a place that is separate from Joseph Kony and the other
22 commanders. It spreads out, essentially, the commander
23 base into three different countries in a way that is
24 good.

25 In fact, one of the scenarios that we do not like as

1 much would be if all the commanders were together, or
2 that Kony was together with Otti at a time when the
3 warrants were released. If that were to happen then the
4 positively negative result that one could foresee is
5 that there could be planning for retaliatory attacks
6 that would take place, and because they were in the same
7 place they would not be detected over the radio in the
8 same way that we have detected some other
9 communications.

10 So we view the current moment as a rather positive
11 one. And watching the entire security
12 situation, September is a very, very attack-free month
13 so far, and we think the reason is because efforts are
14 being concentrated on these other things.

15 Some of the other commanders, Odhiambo, for example,
16 who also is one of the named persons, according to
17 recent communications he was ordered into Uganda to find
18 food and then to bring it back to Joseph Kony.

19 So the operations right now are not really focused
20 on attacking civilians. And we see the movement into
21 DRC as enhancing that trend, not detracting from it.
22 What we do not particularly like is maybe what might
23 follow this, because again it is unpredictable. So it
24 does strike us as important to be in this situation,
25 where the leaders are diffuse, the level is down. But

1 we always bear in mind that in the past when the leaders
2 have coalesced and then come back into Uganda, it has
3 usually been to launch more attacks. We think the
4 capability is pretty low; even the number of fighters
5 now is estimated to be quite low. But it is a scenario
6 that we would like less better than we have now.

7 MR THE PRESIDING JUDGE SLADE: Thank you for that. The
8 Victims and Witnesses Unit, would you comment on the
9 same question, please.

10 MR O'BRIEN: Yes. Mr President, the only comment is that we
11 agree with that comment, that the longer the LRA remain
12 outside the areas in which they are operating, the
13 better and the safer the victims and witnesses are.

14 MR THE PRESIDING JUDGE SLADE: Thank you. Very well. Thank
15 you.

16 The next question is, to put it quite shortly: why
17 does the Office of the Prosecutor seek a specific
18 deadline for unsealing? We cannot understand the
19 insistence on a deadline, but we want to understand it
20 carefully.

21 We have noted the information, what you said, but
22 the Prosecutor said in the provision of additional
23 information, the statement, for instance, that resetting
24 the date of 28th September 2005 will introduce
25 a significant disruption to the planning process. Has

1 such a disruption occurred? And why was this date
2 abandoned?

3 We note, further, that the OTP request for a date to
4 have the warrants unsealed due to changed circumstances
5 in the DRC has been modified somewhat. We note, in
6 particular, the statement that if a public announcement
7 from this Court were to interrupt the meetings and
8 discussions currently underway in the DRC, with the LRA
9 forces led by Otti, a potential opportunity to apprehend
10 Vincent Otti could be lost. That is a statement that we
11 have noted.

12 With these in mind, is there a risk that
13 circumstances may change yet again such that the OTP may
14 again request a different date for unsealing? And what
15 exactly is the significance of 5th October, please,
16 Ms Chung?

17 MS CHUNG: Mr President and your Honours, the original date
18 of September 25th was planned around, and a lot of the
19 co-ordination was described in the provision of
20 additional information. In order to explain the changes
21 in our position -- and we readily concede that we asked
22 for the date to be moved after we really had planned
23 around the 25th. I think to explain that, it is
24 important for us to emphasise to the Court that we were
25 very much reacting to an unknown situation. We knew at

1 the time that we provided the additional information
2 that the LRA troops with Otti had begun moving into the
3 DRC, and that they had arrived in the DRC. What we did
4 not know, and which changed over that weekend, and
5 caused us to submit the application on Monday morning,
6 is that the engagement with the DRC had started.

7 That created two things that changed the date in our
8 mind, or made it necessary -- really necessary for us to
9 request that there not be unsealing at that particular
10 moment. One was that there was all of sudden an
11 opportunity for arrest, because they were face to face
12 with Vincent Otti, and there was a possibility of
13 working something out, or beginning to make contacts
14 with our partners in DRC to see what could be done;
15 because it could have been a situation where LRA came
16 in, stayed for a while, left, or did not ever reach
17 whoever. But what happened was: the DRC forces went out
18 to meet them. And what we learned over that weekend was
19 that they were face to face; they were having meetings.

20 The second thing was that it became dangerous
21 because we did not know enough about the situation, and
22 we did not want the arrest warrant announcement to
23 potentially burst in on some talk or engagement that was
24 going on where the people who were involved did not know
25 about the warrants before being face to face with the

1 LRA troops.

2 So for those reasons we did not want to be
3 responsible for some kind of mistimed engagement between
4 LRA and the DRC forces, or even with MONUC, because we
5 were not sure what was happening at that point. We just
6 did not have enough information to make sure that
7 a public announcement would hit at a time that was safe
8 for those who were engaging in these negotiations in the
9 DRC. So we thought it was important to come to the
10 Court and ask that we be allowed to tell the partners to
11 capitalise on the arrest opportunity, but also that we
12 not have a public announcement at that specific moment
13 in time, because we just did not have good co-ordination
14 with what was going on, on the ground.

15 What has happened since then, that has cause us to
16 maintain our state of readiness, and to continue to ask
17 the Court for unsealing at the earliest possible date is
18 that essentially the information -- and this has been
19 publicly reported, it has been confirmed by our
20 sources -- is that the engagement was not successful.
21 LRA have not agreed to disarm, and now the talk is about
22 some kind of action to disarm them forcefully, or to
23 push them out of the country, or even to engage them
24 militarily. Those are I think the possibilities that
25 you can foresee when you read the press reports.

1 For that reason we do not have this fear that we are
2 interrupting in a dangerous way the negotiations. We
3 have already, because your Honour has authorised us to
4 do so, been able now to inform the people who are in the
5 negotiations, so there is no surprise element that would
6 potentially impact the negotiations in a bad way. The
7 only surprise element would be against the LRA troops.

8 So that is what has happened to change the date of
9 the unsealing, and then to cause us to now assess it as:
10 no, but the moment of danger is being controlled; the
11 opportunity for arrest is just as vivid as it was a week
12 ago when the engagement first began; and now we have, in
13 addition -- I do not want to intrude on the Registrar's
14 province, but there has been transmission to the DRC, we
15 have sent word of the existence of the warrants to the
16 people who are engaging this LRA group in the DRC. So
17 we continue to believe that this is a very, very good
18 moment to move ahead with unsealing.

19 And with the Government of Uganda all this planning
20 we had done to make sure that we were co-ordinated, with
21 protection around a certain date, we have been able to
22 maintain that in this week. So the idea of moving
23 forward as expeditiously as we can still remains
24 important to us.

25 I think an additional factor, which is very, very

1 important here, is that now there are leaks. And it is
2 not because people are disregarding the Court's
3 confidentiality orders. But the example of last week
4 was I think exactly the kind of thing that happens:
5 Ambassador Swing, who was speaking to the UN Security
6 Council about the DRC, he had private notes, and he had
7 been informed about the ICC warrants. He raised this in
8 the Security Council, which was of course an absolutely
9 appropriate thing for him to do, and some reporter got
10 a hold of his notes. So he was making every effort to
11 be confidential, but then it was reported in the papers
12 that ICC warrants exist.

13 It is important, I think, for the institution,
14 because soon we will be in a position -- and it is
15 happening even today -- that it is being reported more
16 and more that either warrants are imminent, or even that
17 they exist.

18 We cannot sustain this position for very long. We
19 are already being asked to either confirm or deny these
20 reports. And it is not just a matter of being truthful
21 about what the progress of the case is; there is also
22 a very big security implication, because our contacts in
23 Uganda -- and particularly (Redacted)
24 (Redacted)-- are very
25 concerned that there be clarity about how far the

1 warrants go. For everybody else in the LRA who
2 potentially could be reintegrated into society and
3 convinced to surrender, it is very important that
4 everyone in the LRA know that the warrants are for the
5 top, top leadership. And that has been emphasised to us
6 many times.

7 So we are in this moment where people are already
8 talking as if the warrants exist; we have an opportunity
9 to confirm it in a timely way, in a true way; we need to
10 send a message to those who might harbour the LRA, or
11 give them support, that that support and harbouring
12 should end -- that is another thing that cannot be
13 established in this intermediate ground. There is also
14 a big need in Uganda -- it gets raised time and time
15 again -- there is a lot of speculation about what the
16 LRA warrants are going to do. There is still a lot of
17 fear that we are going to be prosecuting children; there
18 is a lot of fear that mid-level commanders are being
19 sought in these warrants, maybe even ones who have
20 already surrendered. That is one of the reasons the
21 Government of Uganda gave to us for their preference for
22 unsealing the warrants *in toto*, was so that there was
23 absolute transparency about what the Court is doing.

24 I do think it is a critical moment for the Court,
25 because certainly there has been talk since June that

1 these warrants are out there. And the idea that the
2 case has moved forward into the next stage is one that
3 we will be called upon to confirm or deny. My suspicion
4 is that the media attention, even if we were to defer
5 the date, or wish to defer the date, I suspect that in
6 the next week or so it is going to reach the point where
7 we would probably be filing some kind of emergency
8 application to the Court, because something will
9 happen -- just the way that this mushrooms usually --
10 something will happen that makes it necessary for us to
11 say more than we are saying now. I do not know if that
12 would be full unsealing, but certainly we think we are
13 prepared for unsealing. But now we are in this halfway
14 state that really is not very sustainable. Among other
15 things, it leaves our co-operation partners in a very,
16 very bad place. We have them, and they are now working
17 on executing the warrants, but they will wait for us to
18 confirm that, and some of them will be asking for the
19 warrants, and we would like to be in a position to be
20 able to help them do that.

21 MR THE PRESIDING JUDGE SLADE: It also rather raises the
22 question of the confidentiality to be attached too,
23 which was laid down very clearly in the Decision of the
24 Chamber. What is more particularly worrying is yet
25 another report of yet another -- and a more

1 senior United Nations official either was not properly
2 briefed, or went dead against his briefing about
3 confidentiality.

4 Now, these matters have since occurred, since the
5 Decision of the Court, and since the making of the
6 urgent application of the OTP specifying 5th October,
7 setting yet another deadline. And it is not the
8 revelation from Swing -- or rather the forgetfulness of
9 Ambassador Swing and his private notes that justifies
10 the setting of this date. We are trying to understand
11 what is really the rationale and the explanation for
12 setting a deadline which, as we need to look at in terms
13 of the tasks that need to be carried out -- and we will
14 do this in the course of this status conference -- may
15 or may not -- possibly more not -- be attainable because
16 of the nature of the work that needs to be carried out.

17 But for the moment, take that as an observation from
18 me. But we will return when we begin to look at the
19 methodology that will be involved.

20 I think we need to move ahead, because there is
21 a range of questions, and I would now like to invite my
22 brother, Judge Politi, to put more questions to you all.
23 Judge Politi, please.

24 JUDGE POLITI: Thank you, Mr President. My questions relate
25 to the transmission of the requests of arrest and

1 surrender, and to the execution of the warrants.

2 On the transmission of the requests for arrest and
3 surrender, my first question -- I would say my first and
4 second question, which is connected to the first one --
5 is addressed to the Registrar.

6 The question is the following: what is the status of
7 transmission of the warrants of arrest and the request
8 for arrest and surrender issued by the Chamber? Has the
9 Registrar been able to complete this transmission?

10 The other question, which is connected to the first
11 one, is: what difficulties, if any, have arisen in the
12 process of transmission?

13 MR DUBUISSON (interpretation): Mr President, your Honours,
14 as regards the request for arrest and surrender, and the
15 arrest warrants and annexes, they were notified on
16 Friday 30th September to the authorities of the
17 Democratic Republic of the Congo and also to the
18 authorities of Uganda. We have notified the Attorney
19 General of that, the Attorney General of the Democratic
20 Republic of the Congo, and we have transmitted the
21 documents to the Ministry of Justice in Uganda. The
22 Ministry -- the Registrar is currently notifying the
23 documents to the Ambassador of Sudan, to refer to the
24 third country.

25 We have of course pointed out to all of the

1 authorities that the arrest warrant and the annexes and
2 the request for arrest and surrender are still under
3 seal and remained under seal until this Chamber ordered
4 otherwise. So we have been relatively clearly on that
5 matter, bearing in mind also that there has been a leak,
6 a leak which Ms Christine Chung just referred to on
7 behalf of the Prosecutor.

8 As regards the difficulties, we have encountered no
9 difficulty in servicing the documents and notification
10 of the documents. We are now looking ahead to the
11 future steps which the states will need to take place to
12 execute the documents; that is to say that we have not
13 yet had a full response from the various authorities.
14 We are currently, in the absence of implementing
15 legislation in the two states' parties, we are
16 attempting to finalise a document on the standard
17 procedures, the functioning that should be utilised by
18 the states in question.

19 So that is a little report from me as regards the
20 status, and I hope that I have responded to your
21 question.

22 JUDGE POLITI: Yes, Mr President. I was particularly
23 interested to hear whether the Registrar would
24 anticipate any special difficulty in relation to the
25 lack of implementing legislation in Uganda. I think he

1 has mentioned that if he has any other information to
2 add to it, I would be very grateful to hear.
3 MR DUBUISSON (interpretation): Well, from the discussions
4 we have had with the Ugandan authorities, and more
5 specifically with a working group which has been set up
6 by the Ugandan authorities regarding a potential
7 procedure for arrest and surrender, the Ministry of
8 Justice is now going to transmit the ten documents --
9 which I mentioned before -- to the Public Prosecutor,
10 who will transmit them in turn to the police, which will
11 work with the army to proceed with the arrest. It will
12 undoubtedly be a military operation.

13 We wished to establish which authority would be
14 involved in reading the rights to the individuals.
15 There are lawyers both in the army and in the police
16 force, and we have been assured that this will be
17 handled correctly. Now, on the basis of those
18 explanations we have been informed that there would be
19 an additional step; this is information which we
20 obtained last Friday. We understand that it may be
21 necessary to transmit the ten documents onto
22 a magistrate's court, which may have to examine --
23 review the documents before they go further.

24 We have no further information on that particular
25 step. We do not know whether it should take place

1 before the documents are transmitted to the Public
2 Prosecutor's Office. But in any case, the channels
3 which were presented to us as being the correct
4 channels, which were presented to us by the Ugandan
5 Government, it seems now may be different to the
6 channels on which we had an original agreement with the
7 Ugandan authorities.

8 On the basis of our initial contacts it is clear to
9 us that, from the point in time that an arrest is made,
10 there will be -- a very short period of time will lapse
11 before transfer. That is the information which we have
12 had from one of the ministries through the Solicitor
13 General. We also enquired about the possibility of an
14 appeals procedure on behalf of possible defence counsel.
15 We heard that no, it would be not be possible for such
16 an appeal to be lodged, an appeal against transfer to
17 the Hague.

18 That is all of our information, I think, on this
19 point. Thank you.

20 JUDGE POLITI: Thank you. My next question is addressed to
21 the OTP and to the Registrar, and is the following: what
22 steps, if any, have been taken by the OTP and Registrar
23 to facilitate co-operation between the Court and Sudan
24 with regard to the transmission of request for arrest
25 and surrender?

1 You have partially answered this question. If you
2 have any other information, both the OTP and the
3 Registrar -- with regard, I said, to the transmission of
4 requests for arrest and surrender, and their execution.
5 In particular, have any steps being taken by the OTP or
6 by the Registrar, or have been reiterated by the OTP or
7 the Registrar to enter into an ad hoc arrangement with
8 Sudan under Article 87(5)(a) of the Statute?

9 MS CHUNG: Mr President and your Honours, I would just start
10 by saying this is an extremely sensitive matter. So
11 I am pleased, as I have been in the past, to report the
12 status of these negotiations, but I would hope that, as
13 maybe you have seen from our proposed treatments of some
14 of the other documents, that this type of material will
15 remain sealed until objectives like the objective of
16 arrest are indeed accomplished, because it is easy to
17 imagine why even disclosure of this type of information
18 could make the potentially co-operating parties not so
19 amenable or well-disposed to co-operating.

20 I think I had reported to the Court previously that
21 there have been attempts to negotiate an ad hoc
22 agreement with the Sudanese; and those attempts
23 continue. There is really not so much specific to
24 report. I think that channels of communication and
25 potential co-operation remain open. It is always

1 difficult to say how fruitful they will be, but we
2 believe that we are in the final stages of negotiating
3 an ad hoc agreement with the Sudanese.

4 MR THE PRESIDING JUDGE SLADE: Thank you. Mr Registrar.

5 MR DUBUISSON (interpretation): Mr President, your Honours,
6 the first contacts which the Registry has had with the
7 Sudanese authorities are taking place at this point in
8 time. As I said, the Registry is serving documents or
9 notifying the Sudanese ambassador. In the future we
10 hope to dispose of an office somewhere in Sudan. To
11 speak of logistics, we are currently in the study phase,
12 looking into what might be possible to improve our
13 co-operation.

14 JUDGE POLITI: Thank you. My next question is addressed to
15 the Office of the Prosecutor, and is the following: what
16 is the OTP's overall strategy to secure arrest? And
17 which actors will potentially be involved in the
18 execution of the warrants? Again, what international
19 support has the OTP garnered in order to maximise the
20 ability for the warrants to be executed?

21 MS CHUNG: Mr President, your Honours, I have addressed this
22 issue in the past, and I can provide something of an
23 update. Let me take the different cases, maybe.

24 The will of the Ugandans to arrest we have no doubt
25 of. The issue is going to be: what support can they get

1 internationally? And I have mentioned to your Honours
2 before the role that countries who provide donor aid to
3 Uganda have played. Those are among the countries that
4 we have notified of the existence of the warrants now.
5 And the pressure and the support that can be brought to
6 bear, whatever it may be, now is beginning to percolate.
7 I think that the objective of letting states and
8 organisations know, so that they could begin to
9 strategise about how potentially to support arrest
10 efforts is working; but it is very, very soon to tell in
11 which way it will develop. Really the contacts we have
12 had so far have been in the nature of: "We are very
13 pleased to receive this news. Let us think about how it
14 affects what we are doing, and what we are planning."

15 Even in cases where it was anticipated that the
16 Court would move in this direction, there obviously is
17 a new level of disclosure which comes with knowing who
18 the targets are, where they are, and getting ready for
19 the possibility of arrest.

20 So at this stage we have let the parties know who
21 are the first tier of potential support for the
22 warrants, and they are working in consultations with
23 each other and with us. So I cannot report at this time
24 that there is something concrete in terms of -- you
25 know, it would be much more exciting if I could say

1 "There is somebody moving from here to there", but I do
2 not think we are at that stage yet; it is just too
3 early.

4 What I can say -- and this is one of the reasons
5 that I think it is very important that there be public
6 unsealing -- is that we do not know the level of
7 international support that we could get for warrants,
8 public support that would pressure the states and
9 organisations in turn until there is unsealing of the
10 warrants.

11 And so in our minds this case is very much -- over
12 the weekend I was reading the cases of Milosevic and
13 Karadzic and Mladic and Charles Taylor, and the various
14 cases where there was sealing initially, and then
15 unsealing of the warrants when witness protection and
16 other measures were put into place. And certainly we
17 see that, in terms of realising the full potential of
18 international co-operation, we do not feel that we will
19 have hit the limit of that, or anywhere near the limit
20 of that, until we have full public knowledge as well of
21 what the warrants contain, and the seriousness and the
22 gravity of the charges that are contained in them.

23 So all the negotiations about which I previously
24 informed the Chamber are ongoing. And I think the
25 responses have been -- it is not something that they

1 were not anticipating. They knew it would come at some
2 point, so the responses have been measured and
3 appropriate. But it is very, very quickly after we have
4 notified them, so I cannot say too much more in terms of
5 concrete steps that have been accomplished.

6 JUDGE POLITI: Thank you. My next question is connected to
7 the previous one, and is addressed also to the OTP. In
8 its decision of 27th September on the Prosecutor's
9 urgent application, the Chamber invited the Prosecutor
10 to inform the Chamber of the governmental authorities or
11 inter-governmental organisations notified of the
12 existence of the warrants of arrest, and the names of
13 the five persons for whom the arrest is sought.

14 The question is: which governmental authorities or
15 inter-governmental organisations have received such
16 notification to date? Thank you.

17 MS CHUNG: Again, Mr President and your Honours, I am happy
18 to take up the Court's invitation, but again this is
19 quite a sensitive matter. So we would appreciate if
20 this information would remain sealed even beyond any
21 potential unsealing of the arrest warrant application.

22 The transmissions the Court is aware of. We also
23 notified various branches of the UN; MONUC; the French;
24 the British; the Dutch; the SPLA, which is the group
25 that is operating in southern Sudan and has now become

1 part of the Sudanese Government through the
2 comprehensive peace plan; the US, which is one of the
3 key donor countries to Uganda; and the Norwegians, which
4 is also one of the key donor countries. We also
5 notified the EU.

6 JUDGE POLITI: Thank you. You mentioned, Madam Prosecutor,
7 that information has been given to MONUC, among other
8 countries and organisations. Does the OTP see an
9 important role for MONUC in the arrest of LRA leaders in
10 the DRC? Or otherwise what kind of role is envisaged
11 for MONUC in this respect?

12 MS CHUNG: Yes, your Honour, the role of MONUC is now quite
13 important because of the existence of this group in the
14 DRC. If there were to be an arrest in the DRC, the way
15 it would have to be implemented is either a direct
16 arrest by the Congolese authorities, by the Congolese
17 army, or it could be a mechanism of a request from the
18 DRC to MONUC to effectuate the arrest. So it was
19 important in our view to notify MONUC so that they could
20 be advised that they may potentially be an arresting
21 party.

22 JUDGE POLITI: Following the previous question, is there any
23 co-operation agreement being negotiated with MONUC? Is
24 there any talk of any kind to set up the terms of this
25 co-operation?

1 MS CHUNG: The co-operation agreement with MONUC is again
2 the subject of ongoing negotiations. We have
3 a co-operative relationship with MONUC; I would stress
4 that. The agreement is not finalised yet, but we are
5 working on finalising that agreement.

6 JUDGE POLITI: My last question is addressed to the OTP.
7 The OTP specified that it focused its investigation on
8 the top leadership of the LRA. Now, is the Prosecutor
9 investigating alleged crimes committed by other leaders,
10 and eventually planning to request additional warrants
11 for other leaders of the LRA in the future?

12 MS CHUNG: Could I have a moment from your Honours? Thank
13 you, Mr President. (Pause).

14 Mr President and your Honours, the investigative
15 plan is to continue to investigate future crimes of the
16 LRA. So as your Honours are aware the scope of the
17 initial warrant application was -- the focus of the
18 investigation was July of 2002 to June 2004,
19 essentially. The plan is to investigate any future
20 crimes and, at any time that the warrants become public,
21 what we would like to do is forewarn and make a public
22 announcement that we will continue to investigate future
23 crimes.

24 We will continue to investigate those who support
25 and harbour the named individuals. But it is not our

1 plan at the time to continue investigating the past
2 crimes. After the investigation that we carried out, we
3 felt that the most worthy targets were the ones that we
4 named in the warrant application; and the investigation
5 also bore out that the attacks were representative in
6 a very highly co-related way with gravity.

7 So we are satisfied with the list of named persons,
8 and our efforts in the future will be toward future
9 crimes and support and harbouring.

10 JUDGE POLITI: Thank you.

11 MR THE PRESIDING JUDGE SLADE: Thank you very much for that;
12 and thank you, Judge Politi.

13 I should now invite Judge Diarra, if she has any
14 questions to put, please. Judge Diarra.

15 JUDGE DIARRA (interpretation): Thank you, Mr President.

16 I do indeed have some questions to put to the Office of
17 the Prosecutor.

18 In its decision of 21st September 2005, regarding
19 the provision of additional information, the Chamber
20 requested the Prosecutor to specify what implications,
21 if any, would the unsealing of the warrants, or of other
22 related documents, at this stage, have for ongoing and
23 future investigations, including the preservation of
24 evidence, and for persons whose arrests may be sought in
25 the future.

1 Could the Office of the Prosecutor clarify whether
2 unsealing at this stage will not instil reluctant or
3 unwillingness on the part of the witnesses, and thereby
4 negatively affect future investigations against other
5 individuals?

6 MS CHUNG: I think our assessment at this point in time is
7 quite different. Initially when we asked for sealing
8 there was much, much work to be done on witness
9 protection and the preservation of evidence. We have
10 now accomplished that work, and we feel that, to the
11 contrary, we are reaching the point where the lack of
12 public warrants is impairing us.

13 So I want to emphasise to the Court I know that it
14 is easy to think about this, and we certainly in the
15 past have thought about it, as: "Well, confidentiality
16 can be a very good thing, it is good to maintain it".
17 But we really have reached the point where
18 confidentiality is beginning to impair us.

19 Let me give you a couple of examples. For example,
20 our insider witnesses, and your Honours are well aware
21 of how vital the insider witnesses are. There is a huge
22 fear in the insider community that (Redacted)
23 will be prosecuted by this Court. And in fact even
24 insiders now that we have met with four or five times
25 are still asking us in a very distrustful way: "Am

1 I going to be the next person to be prosecuted?" And
2 now, to add to that, we have met with them about their
3 own security.

4 So they are feeling as though they have been
5 forthcoming with us, they are willing to help provide
6 information to the investigation, and yet they still
7 have no assurance from the Court that they are not the
8 ones who are going to be prosecuted; they have no
9 assurance from the Court that young children in their
10 community who have returned are not the ones who are
11 going to be prosecuted. And they also are being
12 reminded that they are putting their own security and
13 safety on the line to help the investigation along.

14 Another example is the victims. It is so important
15 all the security issues, but it is also I think
16 important to bear in mind -- and we meet with these
17 victims all the time -- that they came forward because
18 they wanted the situation in northern Uganda to become
19 known. And now when we meet with them for the fourth or
20 fifth time, they begin asking us: "When is it going to
21 come out that there are going to be arrest warrants?"

22 So the security is now in place, and it is difficult
23 to maintain. For example, (Redacted)
24 (Redacted)
25 (Redacted). It is not a small thing to

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 So when I talk about maintaining the security
6 measures in anticipation of a chosen date, these things
7 happened at a certain time because we anticipated that
8 we would -- it was all the co-ordination that went into
9 that date. And now we have sustained that, but these
10 measures are the most effective when you first put them
11 in place, because of course over time people get to know
12 about them.

13 But essentially where we are now is: everything that
14 we think was necessary and appropriate is done. And we
15 are starting to hear even from our witnesses and victims
16 that we were out to protect: "Okay, well when are things
17 going to move forward? And can we have clarity and
18 transparency about what the scope of the investigation
19 is going to be?" So we do not think it is going to have
20 any negative effect at this point to be unsealed.

21 JUDGE DIARRA (interpretation): Ms Chung, this is quite an
22 important matter. Emphasis has also been laid on crimes
23 committed by the Ugandan authorities. Has the Office of
24 the Prosecutor taken measures to investigate those
25 crimes also? Or is the OTP envisaging to do so?

1 MS CHUNG: Mr President, and your Honours, yes we have. And
2 I think it is important -- and this is again another
3 matter about which clarity to the public and some kind
4 of outreach, really -- you know, we have withheld from
5 doing that.

6 But essentially what has happened in this phase of
7 the investigation is we did gather information; we asked
8 questions; we invited submissions from (Redacted) and anybody
9 else with information; we gathered information from the
10 (Redacted). And we have assessed
11 all that information using the same parameters that we
12 use to assess LRA crimes, and the judgment of our Office
13 was that the LRA crimes were sufficiently more grave
14 that that should be the first set of warrants.

15 That does not mean that enquiries into the UPDF
16 allegations and allegations against the UPDF will end;
17 they are ongoing. And we continue to assess information
18 that is coming out all the time, including in this last
19 week information from the (Redacted)
20 (Redacted).

21 If I would be permitted to do so, I would like to
22 supplement my prior answer, because I realised we have
23 received -- your Honours, I do not believe we have
24 discussed this person before, but Betty Bigombe is
25 somebody who is well known; she has been the negotiator

1 with the LRA for the past years, and the most successful
2 efforts to attempt to negotiate an end to the violence
3 have been through her.

4 She wrote a letter to the Office of the Prosecutor
5 over the weekend, and the letter in its text makes the
6 point about how, in terms of the witnesses and the
7 securing of evidence, it is actually impairing not to
8 have public warrants at this point.

9 The text of the letter, which is dated from
10 yesterday, says:

11 "Dear Mr Prosecutor, I have taken the liberty to
12 write to you, sir, to express my concerns about the
13 secrecy of the secrecy of the Decision taken by the
14 Court. I have read in the newspaper that arrest
15 warrants for the LRA are imminent.

16 "As someone who has been mediating between the
17 Government of Uganda and the LRA, I would like to advise
18 that it will be better for the people of northern Uganda
19 if the arrest warrant is issued in a transparent manner.

20 This will help people to understand and know who are
21 indicted. It will also help me to explain to the people
22 of Uganda, and LRAs who are not indicted and still out
23 there, that opportunities still exist for them to come
24 out and be reintegrated.

25 "I hope that you will take this humble advice into

1 consideration."

2 This was a letter addressed to the Prosecutor. This
3 is someone who has been critical of the ICC
4 intervention, and she obviously recognises at this point
5 that the case will probably proceed. But we certainly
6 think it is significant that, in terms of what advice
7 she is giving if the case is going to proceed, our
8 assessment is in line with hers. We do think this type
9 of clarity is important to moving the case forward from
10 here.

11 MR THE PRESIDING JUDGE SLADE: Thank you for that. I think
12 this will be a convenient time for the status conference
13 to have a bit of a break. Perhaps we should do that,
14 and I am told that we can come back in half an hour, at
15 5 o'clock. I think the interpreters would find this
16 adjournment helpful.

17 Incidentally, Madam Prosecutor, the reference to the
18 letter from Betty Bigombe might mean that we need to
19 have it introduced into the record. That appears to be
20 the case, and perhaps Madam Registrar could look to
21 that. Let us take an adjournment now, and come back at
22 5 o'clock.

23 Break at 4.31 pm -- End of break at 5.04 pm.

24 THE USHER: All rise. The International Criminal Court is
25 now in session. Please be seated.

1 MR THE PRESIDING JUDGE SLADE: The status conference is
2 resumed. May I invite Judge Diarra to continue, please.

3 JUDGE DIARRA (interpretation): Thank you, Mr President.

4 I would like to ask the question, again to the Office of
5 the Prosecutor: could the Office of the Prosecutor
6 restate the likely impact the unsealing of the warrants
7 would have on the potential of the Chamber to take
8 protective measures for the purposes of forfeiture, in
9 particular for the ultimate benefit of victims.

10 MS CHUNG: Mr President and your Honours, we would be very
11 hard-pressed at this point in time to assess this impact
12 and to offer guidance to the Chamber about preserving
13 assets for forfeiture because, as a factual matter,
14 there is very, very little information that has come to
15 light in the investigation about assets or property that
16 might be available for forfeiture. So certainly this is
17 a matter that we have asked very routinely about, and it
18 is important for other reasons in the case as well; it
19 is important for investigative leads. But at this point
20 it is difficult to imagine what orders could be crafted,
21 if the Court were imagining such orders, because we just
22 have not very good information about the availability of
23 any assets.

24 JUDGE DIARRA: Thank you. In paragraph 12 of the
25 Prosecutor's application, the Prosecutor submitted that

1 unsealing becomes a feasible and potentially powerful
2 means of garnering international attention and support
3 for arrest efforts. Could the Office of the Prosecutor
4 clarify why and to what extent it still sees a need for
5 unsealing following the recent issuance by the Chamber
6 to the DRC and Sudan of requests for arrest and
7 surrender.

8 I would like to state that with the principle of the
9 existence of the arrest warrants, is it not enough in
10 itself to motivate all the state parties to support the
11 arrest of these accused persons?

12 MS CHUNG: Mr President and your Honours, we do not want to
13 understate the significance of the authorisation that we
14 obtained from the Chamber last week; it was very
15 important. It was a very important step, and the
16 ability that we had to notify the different people
17 involved in the negotiations in the DRC was critical.
18 In fact, it has generated some momentum.

19 I realised in the break that one answer that
20 I failed to give Judge Politi is, in response to
21 notification from us, now we have a situation where
22 MONUC is moving to reinforce the DRC forces that are in
23 the area. They are making an attempt to surround the
24 LRA forces there. It is not likely but it is not
25 inconceivable that there could be an intervention with

1 Vincent Otti.

2 Everyone's aim is to get the LRA either disarmed or
3 out of the DRC, if necessary by military force, as soon
4 as is possible. So the idea that we were able to notify
5 MONUC and the DRC, and that these actions came as
6 a consequence, demonstrates how powerful the
7 notification was.

8 At the same time, though, I think this introduces
9 the idea of how critical the moment is to proceed.

10 Because although the actors and the states and the
11 organisations have the notification now, and the
12 transmissions have been made, there is a vital
13 importance in getting public support to put increased
14 pressure behind the execution of the warrants. It is
15 just a matter of: we will never know exactly how much
16 support can be garnered until the warrants become
17 public, and what can potentially be done behind the
18 bilateral communications that we have.

19 The UN, for example: we know now that different arms
20 of the UN have this information. They have to
21 co-ordinate; it is a very diffuse organisation. And the
22 fact that comments are coming from the Political Affairs
23 Department, from DPKO, from MONUC, it takes a big
24 effort. And it will ultimately take a public effort --
25 public knowledge of what is in the warrants -- to make

1 sure that these efforts are properly co-ordinated.

2 So one point there is that, despite the ability to
3 transmit, and the ability to notify bilaterally our
4 co-operation partners, we do think there is much to be
5 gained by having international support behind the
6 warrants. The effect of what the Chamber has written in
7 those warrants cannot be underestimated; and the impact
8 that it will have on the community. There is a reason
9 that this is the biggest neglected humanitarian crisis:
10 it is because nobody talks about it. And to get the
11 support of NGOs, IGOs and the general public behind the
12 idea that these are people named in warrants of arrest
13 who need to be arrested and brought to face their day in
14 Court, regardless of what the outcome may be.

15 That is a type of support. It is not theoretical.
16 It has happened. It has happened with Milosevic, it
17 happens today with Karadzic and Mladic, and these are
18 exactly the examples when you look back at the cases and
19 you see the unsealings.

20 These are the reasons the unsealings were ordered,
21 was that you reached a point where there was no longer
22 a reason for sealing, and it was necessary to really
23 ensure that you capitalised on a moment behind
24 transmission.

25 So we have transmission now, but where is going to

1 be the public support for and the outcry for arrest, to
2 make sure that pressure continues to be exerted.

3 Another example that also bears on Judge Politi's
4 question is the Sudanese. The Sudanese co-operation
5 effort -- our consultations with them have been ongoing.
6 They contacted us to start renegotiating the agreement
7 after the coalition Government, the new Government came
8 into place. So they recognise that there is at least
9 some interest to be gotten by having a co-operation
10 agreement with the OTP.

11 This is a government like all governments: it will
12 respond to outside pressure. And it is a critical
13 point, because the support from the Sudanese in the past
14 has been the reason that the LRA persists. So giving
15 notice to people at this point, when we are starting to
16 get support for the arrests, giving notice
17 simultaneously in this moment: "Do not continue to
18 support the LRA. If you are inclined to harbour, or
19 provide weapons, or provide means, you should be on
20 notice that these are individuals named in arrest
21 warrants." I always want to use the term "indicted",
22 which is not correct here.

23 But this is the kind of support that we are looking
24 to get to this next phase. And the idea that right now
25 all the other things that I mentioned -- the security is

1 as good as it has ever been. We have always had a view
2 that the first day security was in place -- I was trying
3 to think over the break about this issue of the day, and
4 I think there is a fundamental maybe difference in
5 approach, or -- I do not want to read too much into it.

6 But when we sat with VWU what we thought about was:
7 what is the first day that witness protection will be
8 ready? Because that is the day we want to unseal.
9 Because we saw the set-up as being so good, the security
10 situation as so good right now. And the opportunities
11 for arrest are in three places, which just from
12 a standpoint of odds is very good; but when you look at
13 the situation in DRC now, it is ideal. And it is
14 a moment that could be lost.

15 When we had that planning meeting before we
16 submitted the application on September 9th, the day that
17 we agreed we would all be ready was September 25th, so
18 that became the day that we put in the warrant --
19 application to unseal; because our view was very much:
20 the presumption is a warrant is an open instrument.
21 Here there were reasons to seal, and we requested
22 sealing on that basis. But then, when we realised that
23 we were approaching the date when witness protection
24 would be finished, our view was very much: the context
25 is good enough, and the security measures are good

1 enough that we should be looking to go forward as soon
2 as we possibly can.

3 Obviously it means that the Chamber still needs time
4 to do its work. But from the way we were thinking about
5 it, and I think the events of the past week have only
6 emphasised this: now we have a certain momentum. MONUC
7 is aware; DRC is aware; the Ugandans are being as fully
8 co-operative as they have ever been, but they also see
9 an opportunity here; and the Sudanese have now come back
10 and are negotiating with us.

11 So in order to make sure that we capitalise on this
12 moment, we really are very interested -- and anxious
13 even -- to move forward as soon as we possibly can.

14 And we know, because we have lived with the case
15 long enough, that bad things happen as well. When
16 Garang died, that is something we did not foresee. It
17 could potentially have had and could still potentially
18 have very bad consequences for arrest prospects and
19 co-operation.

20 So there are these items that we will never control,
21 and we see now a confluence of factors coming together
22 that really make it a very, very good time. And if we
23 eat into the time period where the situation is good
24 there is always the risk that the situation will change.
25 LRA attacks tend to be cyclical, seasonally; usually

1 starting in February or March they start increasing
2 again. We would not expect, given the current capacity
3 of LRA that there will be a significant increase. But
4 we would rather release the warrants into an environment
5 where we can make the most of the time between now and
6 the wet season, because we know historically that that
7 is a more active time for the LRA.

8 So unfortunately in these hearings there is not
9 often time to discuss many, many of these things that go
10 into the thinking. But these are the reasons why, in
11 consultation with VWU, we chose the day of the 25th. We
12 had this interruption, a "disruption" as Judge Slade
13 called it, because there was this unforeseen event of
14 the DRC movement and the engagement. But we are
15 confident now that, having informed the relevant
16 parties, we are still on the plan.

17 There has been an enormous amount of co-ordination
18 over this date. It takes a lot of co-ordination with
19 the Government of Uganda and its various ministries to
20 be ready on protective measures, to maintain those
21 measures. There has been a lot of co-ordination with
22 VWU and other arms of the Registry, really now daily
23 meetings about what information is going to be
24 disseminated at the moment that the warrants go out, for
25 protection purposes and also for outreach purposes.

1 So I just feel as though I would not want to leave
2 this room without conveying all the work that has gone
3 on even within the Court in preparation for this day.

4 There are other issues that we have raised to the
5 Court like the unsealing of other documents. We do not
6 see those as being as high a priority right now as being
7 able to tell the public about the warrants.

8 I do not know if that is helpful information to the
9 Court, but certainly I know standing here, for example,
10 we would ask for two days' advance notice to the UNDSS.
11 Certainly I know standing here that that cannot be
12 accomplished between now and Wednesday. What I can tell
13 the Court is that with UNDSS, we contacted them today,
14 and they have already actually taken some measures on
15 their own in response to the DRC situation. So the
16 measures they would have to take additionally we think
17 can be accomplished in maybe even a shorter timeframe
18 than two days.

19 But this is just in the nature of letting the Court
20 know and letting the Chamber know what is happening in
21 the planning on our side. But certainly in direct
22 response to Judge Diarra's question, we do feel that it
23 is necessary to have more than the ability -- it is
24 significant, the ability we have had so far. But it
25 also created even more, I think, of a moment to

1 capitalise on, and that we risk losing if we wait too
2 long.

3 JUDGE DIARRA (interpretation): This important, fundamental
4 response or answer you have given -- this important
5 answer leads us to another question straightaway.
6 Indeed, an ambiguity seems to be there in your position
7 with regard to your request or application, your request
8 to make public the warrants of arrest, and at the same
9 time to leave the request for arrest and surrender under
10 seal. Perhaps you could explain that position to us,
11 clarify that, please.

12 MS CHUNG: Yes, your Honour. The basis for requesting the
13 request remain sealed was that, under the terms of the
14 Statute, usually the request and the responses remain
15 confidential. Looking at the request drafted by the
16 Court, there are certain requests made directly to the
17 states which -- I think there is every reason to believe
18 that they will make their efforts to comply with them.
19 But it could be considered more in the nature of
20 a direct dialogue with the state, of the kind in nature
21 that the Statute envisaged would be kept confidential.

22 So while with the warrant there is a presumption of
23 openness, in the Statute itself it seems to create
24 a presumption that the request will remain sealed. So
25 that was the reason for that distinction.

1 JUDGE DIARRA (interpretation): I will come on to my last
2 question. Following up on the question of Judge Politi,
3 my colleague, you responded that the Office of the
4 Prosecutor did not have the intention to investigate
5 into other leaders of the LRA. If, during the
6 investigations concerning the leaders who are already
7 being prosecuted, serious crimes are revealed with
8 regard to other leaders, and even lower level leaders,
9 I do not understand that already an imperative decision
10 has been taken not to have investigations against such
11 persons.

12 Perhaps you could give us some explanations and
13 clarifications in that regard. Thank you very much.

14 MS CHUNG: Your Honour, I just want to make sure that
15 I understand the question correctly. The question is:
16 has an imperative decision been taken with respect to
17 other persons in the LRA to the extent that serious
18 crimes are revealed by the investigation? Is that
19 correct?

20 JUDGE DIARRA (interpretation): Following the question that
21 my colleague Mauro put to you, you responded here that
22 the Office of the Prosecutor did not have the intention
23 to investigate into other key leaders of the LRA. This
24 taking of position, imperative decision-taking, seems to
25 be concerning, worrying as far as we are concerned.

1 Because during the investigations against the current
2 leaders, who are currently envisaged, if serious crimes
3 are revealed committed by other leaders, even lower
4 level leaders, then I really do not understand that they
5 should already escape from any type of prosecution.

6 MS CHUNG: Thank you. Mr President and your Honours, maybe
7 I can clarify this way. I do not want to leave the
8 impression that key leaders of the LRA are being left
9 out. In fact, the clarification is helpful because in
10 terms of key leaders throughout the time period up to
11 the present, the individuals named in the warrant cover
12 the key leaders. And in fact, to the extent that there
13 are people that you see in the hierarchy who are left
14 over, there are reasons that they were not pursued. For
15 example, a couple of them we know are very, very ill and
16 are basically non-operational now.

17 In terms of up to the present time, we feel that the
18 five people named are the most responsible. And even if
19 somebody held a rank that was higher at any given point
20 in time, there are reasons based in objective factors
21 that we did not include them in the ultimate target
22 list. This decision obviously will be reviewed by the
23 Chamber. But we feel that we have justifications for
24 why the list was the five. It is not based on
25 a time-bound element; it is based on the gravity of the

1 crimes, and the gravity of the conduct, and their
2 ability to carry out their leadership functions and to
3 carry out crimes. It is based on a series of factors
4 that some day we will put in front of your Honours in
5 a more formal way.

6 We will continue to investigate future crimes, and
7 we will continue to investigate those who support and
8 harbour the currently named people. You are right,
9 there was an ambiguity in my earlier answer. It is not
10 as though we are saying that there is a window of time
11 that we feel we have not covered. We think that even if
12 you include all the names of the top LRA leaders up to
13 the present time, there are reasons for distinguishing,
14 in terms of seriousness of their conduct, the ones that
15 were named from the ones that were not named.

16 MR THE PRESIDING JUDGE SLADE: Thank you very much.

17 Now, I want to put another line of questions at this
18 point, aimed largely at getting some clarification on
19 the redactions sought by the Office of the Prosecutor.

20 Firstly, is there a principle or criterion, or are
21 there principles or criteria which determines or guides
22 the proposed redactions? For example, is the focus in
23 the redactions on a specific person or location, or
24 a combination of these elements?

25 MS CHUNG: Your Honour, with the permission of the Chamber,

1 my colleague Eric MacDonald is prepared to answer this
2 series of questions.

3 MR THE PRESIDING JUDGE SLADE: Sure. Mr MacDonald, please.

4 MR MACDONALD: Initially I was to do my presentation in
5 English. But if you bear with me I will be doing it in
6 French for the benefit of the Chamber.

7 MR MACDONALD (interpretation): As is indicated, it is
8 certainly a combination of two different factors. There
9 are others as well, but briefly it is clearly that if
10 the victim is identifiable or not through the
11 information which is provided in the warrant itself.

12 It is important I think to go back to the factors
13 that perhaps are not -- or the evidence which perhaps
14 are not to the knowledge of the Chamber at the time of
15 the drafting of the warrants.

16 The first reference is to the (Redacted), or the
17 (Redacted). In
18 terms of the French translation of it, the affirmation
19 at the start that it was sent for the (Redacted)

20 (Redacted)

21 (Redacted).

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted).

2 The other victim who was kidnapped at the same
3 time -- the movements of that person are unknown. When
4 we speak about it, it is either still kidnapped or
5 abducted or detained by the LRA, or -- (Redacted)
6 (Redacted)
7 (Redacted)
8 (Redacted). This simple fact makes this person clearly
9 identifiable.

10 Happily at the time that the warrant was issued,
11 this (Redacted) lived in a place which was considered
12 safe, and we have not heard about that person moving to
13 another less safe place.

14 I will now deal with the other reference, that to
15 (Redacted). Also, as the
16 warrant states, (Redacted)
17 (Redacted). And also in your -- this was indicated, that
18 (Redacted)
19 according to the sources of this information. So there
20 were youths and adults.

21 The important information is that (Redacted)
22 (Redacted)
23 (Redacted)
24 (Redacted)
25 (Redacted)

1 Furthermore, there is additional information: during
2 this attack, (Redacted)
3 (Redacted), and that person was forced to -- (Redacted)
4 (Redacted)
5 (Redacted). And so the
6 combination of these two different facts made (Redacted)
7 (Redacted).

8 Currently (Redacted)
9 (Redacted). I insist on the word "relatively" because,
10 unlike the other victims, this situation is a bit
11 different. In the case of this victim there is also
12 (Redacted)
13 (Redacted)

14 I will give you some information in this regard.
15 Firstly, there is (Redacted). They have several people
16 there, or these are (Redacted) where people do speak. There
17 is an (Redacted).
18 Everybody knows each other. The inhabitants of (Redacted)
19 (Redacted) are identifiable and could identify this person.

20 Another important factor not to be left out is the
21 media as well. They have made this warrant public in
22 the form proposed by the Court, and the media could be
23 interested in the fact that (Redacted)
24 (Redacted)
25 (Redacted). This might create an interest on the part of

1 the media. As such, this could make this witness, this
2 victim, identifiable.

3 Furthermore, another factor which is important and
4 which certainly is not negligible, is perhaps a bit more
5 vague, is that of the (Redacted)
6 (Redacted).

7 Even if the information that the judges have does
8 not indicate a presence of collaborators necessarily in
9 (Redacted), the collaborators
10 or sympathisers of the LRA are nevertheless (Redacted)
11 (Redacted), and they could try to identify this victim and to
12 provide information to the LRA.

13 This is the reason why I would like to submit to you
14 that the solution which is the most easy, bearing in
15 mind the different or additional elements that we have
16 provided you with, is to either substitute or replace
17 the language or the terms that are used in the arrest
18 warrant, or to redact the arrest warrant, to *expurge* it.

19 This is a practice which exists in international law
20 and in international courts. I can provide you with
21 examples of arrest warrants: in the Akayesu case, in the
22 ICTR; also in the other courts, or ICTY, where the term
23 "redacted" was used in English, or pseudonyms to names
24 and state the victims.

25 So also we have other examples which we will provide

1 you with. One example of what these two arrest warrants
2 could look like -- because we have the one from
3 Mr Joseph Garang -- either by using language that would
4 substitute the reference to (Redacted); or
5 if that is not the case, completely redact the
6 information of this order that is supplied in the
7 warrant. I could suggest wording to the Court.

8 But I do believe, however, that you need to look at
9 the legal ground upon which you may exercise this power.
10 Article 58(6) is not useful. It is not useful for
11 a simple reason that here we refer simply to amending or
12 altering the nature of the accusations or, to be more
13 specific, the wording of the accusation or charges
14 themselves.

15 At the time when this stipulation was adopted, if we
16 look at the *travaux préparatoires*, which can also be
17 submitted to your consideration, certain countries began
18 to realise that, given the speciality rule, it might be
19 cautious to include in this paragraph a provision
20 stating that prior to arrest and surrender there was
21 a possibility of modifying the charges.

22 This provision was not included in the text. Why?
23 Because this also, if you look at Article 61(4) and (9),
24 it appears clearly that it is possible after the arrest
25 to alter the charges and accusations. So it may have

1 seemed superfluous to explicitly state that it was
2 possible at this stage to alter the procedure, in other
3 words prior to arrest that it was possible to alter the
4 arrest warrant.

5 So if 58(6) does not apply, what would be the
6 provision that you may rely upon in order to redact or
7 remove the information that we are asking you to remove?

8 We would respectfully submit that, according to
9 paragraphs 57(3)(c), combined with Article 68, the
10 Chamber and the Court as a whole has an obligation to
11 protect the safety and private life of victims and
12 witnesses.

13 It is also the case that in your prerogative of
14 issuing warrants under 58(3), you have the possibility
15 of including a brief presentation of the facts in the
16 warrant itself. It does seem to us therefore that it is
17 inevitable that these descriptions and details form
18 a part of the succinct or brief presentation of the
19 facts; otherwise I would be led to believe that they
20 would not have been included in the warrant.

21 This being said, if that information forms a part of
22 the succinct presentation of facts, why do you have the
23 right to create? On the one hand you can alter; on the
24 other hand, in so far as a superior interest, namely the
25 safety and protection of witnesses and victims comes

1 into play. We have all -- as members of the Court, we
2 have all the same obligations, whether it be the Bureau
3 of the Prosecutor, or Article 68(1), or any other organ
4 of the Court.

5 Thus we would like to submit to you some decisions
6 that we would request from you. But there does exist
7 a principle of the inherent jurisdiction of the Court in
8 so far as, in the Rome Statute, one does not find this
9 explicit provision with regard to the possibility of
10 modifying the succinct presentation of facts. So there
11 are different options. Whether it be Akayesu, Milosevic
12 or others, there is case law where it was recognised
13 under certain circumstances, in cases that were not
14 necessarily identical to the present situation, but
15 nevertheless in situations where it was indeed possible
16 for us to recognise the inherent power of the Court to
17 alter its orders or warrants.

18 Why?

19 MR THE PRESIDING JUDGE SLADE: I did not actually ask you
20 about the powers of the Chamber to modify or amend, but
21 do carry on.

22 MR MACDONALD (interpretation): But I presumed that this was
23 perhaps a follow-on question, so I somewhat anticipated.
24 So I will briefly summarise this: international law
25 recognises the doctrine of inherent jurisdiction or

1 inherent power upon which a court may rely in order to
2 seek powers that are not explicitly conferred by its
3 statute.

4 The inherent jurisdiction is considered to be
5 flexible in order to enable a court to fulfil its
6 mandate when it is confronted with unpredictable or
7 unforeseen situations. I submit to the Court that if
8 58(6) is limited to the charges, but if on the other
9 hand you have an obligation on the basis of 58(3)(c) to
10 include a succinct presentation of the facts, then it
11 seems that in ancillary fashion, or in the alternative,
12 you have the power to modify this warrant; because
13 a warrant -- it should not be forgotten in the end -- is
14 an order of the Court.

15 MR THE PRESIDING JUDGE SLADE: Thank you very much.

16 I wanted it read into the record, because it is useful.
17 But thank you very much. I wanted to focus very
18 specifically on points that are covered in these
19 questions.

20 Please explain why the Office of the Prosecutor is
21 seeking the unsealing of the warrants, but to maintain
22 the seal on the applications filed in May. Bear in
23 mind: what will be obvious, of course, is that the
24 warrants do contain a synopsis, if not a fairly
25 significant synopsis, of the factual elements that are

1 being alleged. Please explain.

2 MS CHUNG: Mr President and your Honours, this is
3 essentially analogous to the practice in the ICTY of
4 unsealing entitlements but keeping the supporting
5 materials confidential. And the statutory bases would
6 be the same. There is no need -- there is certainly no
7 obligation to disclose the underlying materials, which
8 were very extensively summarised for the Chamber in the
9 application.

10 So our view was that, though of course the
11 presumption on the warrant is that it would be open when
12 there is no other reason that justifies sealing, with
13 respect to the application it is a different situation,
14 where there is so much witness-related information in
15 it, and there is no obligation to disclose it, that,
16 consistent with the case law in the ICTY and the ICTR,
17 the other ad hoc tribunals, we felt that the right
18 practice was to maintain the confidentiality of the
19 application.

20 That being said, I would emphasise to the Court that
21 we are taking steps now to prepare for that, because
22 certainly when someone is arrested it will be turned
23 over. And at that point the experience in the tribunals
24 I think has been that it is very, very difficult to
25 control; at that point it gets disseminated to defence

1 counsel, other people who may be involved in the
2 proceedings, and it becomes very difficult to control
3 who has access to it.

4 So we are in the process of recommending the next
5 set of witnesses who are highly identifiable from the
6 warrant application -- as opposed to the warrant -- for
7 re-location. It is not an extensive set of people, but
8 there are some.

9 In addition, we have proposed redactions to the
10 Court in the event that the application does become
11 public. I think on further review -- and we had warned
12 the Court that this might happen, just because of
13 changed circumstances.

14 Looking at it now, fourth months after we initially
15 proposed the redactions, we probably would want to
16 redact some additional things. But our view at the
17 current time was that: what is necessary is probably --
18 in terms of support, and what the Statute envisions --
19 unsealing of the warrant, but not the application.

20 MR THE PRESIDING JUDGE SLADE: All right. Thank you.

21 Now, you have anticipated a follow-up question on
22 this one, Ms Chung. You speak of the possibility of
23 further redactions, that is further to the redacted
24 proposals placed before the Chamber in May. Is the
25 Office of the Prosecutor now in a position to be

1 determinative? Do you know what these additional
2 redactions are?

3 MS CHUNG: If the Chamber were to take the view that the
4 warrant application should also be unsealed, we would
5 have to have an assumption to work around. But if that
6 was the assumption, yes, we could do that within a day
7 or so. We had nearly completed another look at it.

8 As your Honour's last questions implied -- and maybe
9 was apparent from the last set of redactions -- it takes
10 bringing to bear everything that you know about every
11 witness. Because something that is highly identifiable
12 makes a piece of information -- even the same piece of
13 information about one witness might make that person
14 very identifiable; but the same information about
15 a different witness would not. So there are these odd
16 things like the fact that with (Redacted)
17 (Redacted)
18 (Redacted)
19 (Redacted)

20 So we have gone through and applied a certain logic
21 the first time. Then, knowing what we know about the
22 current security situation, and knowing more about our
23 witnesses, we have gone through and proposed more
24 protective redactions. But if it was of interest to the
25 Chamber then we could submit that in a day's time, or

1 two days' time.

2 MR THE PRESIDING JUDGE SLADE: Perhaps you have covered this
3 point already, but in the unsealing application, there
4 is an indication that the OTP and the Victim and
5 Witnesses Unit may have to take further witness
6 protection measures in the field if the Chamber were to
7 lift the seal on the applications for warrants. Have
8 you spoken of these already? Or is this another matter
9 that we could have a little bit of information on,
10 please?

11 MS CHUNG: Your Honour, the consultations that we have had
12 about VWU have been in this context of: okay, who might
13 be the next ones to be relocated if it turned out that
14 the warrant application were to become public. As an
15 example, I can give you the victims (Redacted)
16 (Redacted)
17 (Redacted). There the issue is that
18 there are (Redacted)
19 (Redacted). We did not speak with all of them;
20 (Redacted)
21 (Redacted). It is very difficult to
22 redact their stories entirely out of the warrant
23 application without impairing the basis for the charge.

24 So it is true, you can always remove everything.

25 But then the public will be left to wonder: where did

1 the charge come from? Now, that being said, I think it
2 is like a constant balancing of how much redaction can
3 be done; and then, if it is really not possible to
4 redact everything, then you have to consider relocation.
5 That is what happened with (Redacted)
6 (Redacted): in fact the charge (Redacted)
7 (Redacted), because (Redacted)
8 (Redacted). So just the fact that the
9 count exists exposes (Redacted), even if we redacted everything
10 from the warrant application.

11 So with respect to the application, we left this
12 a little while ago when we submitted the application
13 on September 9th, so I would have to go back and look at
14 it again. Our feeling was that there are probably
15 a couple of close cases who we would carefully consider
16 relocating. I do not think it would be more than (Redacted)
17 (Redacted), but it is not something that could be
18 accomplished overnight.

19 I should make clear: when we made the proposal for
20 unsealing the other documents, we considered this: it is
21 a laborious task to consider what to do with the entire
22 rest of the record. Surprisingly we have a lot of
23 record in this proceeding already. It was not our view
24 necessarily that any of that had to be done concurrently
25 with the unsealing of the warrant. That is why we made

1 the application separately. Certainly there will be
2 public interest in what the other proceedings were once
3 the warrants are unsealed. So I think there is sort of
4 a pragmatic limitation maybe on how quickly the public
5 may come asking: "What were the other proceedings in the
6 case?"

7 But the application and the other documents like the
8 hearing transcripts, the entire issue of Rule 176, we
9 sort of considered that to be a separate application,
10 maybe with a longer timeline than the application to
11 unseal the warrants themselves; although naturally it
12 would be the Court's prerogative to disagree with that.
13 MR THE PRESIDING JUDGE SLADE: Thank you. I, for one, found
14 useful the schedule, the Annex A of the proposed
15 redactions that you have kindly submitted to the Court.
16 And we have been talking about a range of other
17 redactions which you seek. Is the Office of the
18 Prosecutor fairly satisfied that these are all the
19 redactions that are required at this point?

20 MS CHUNG: Yes, your Honour. Mr President, with respect to
21 the documents other than the arrest warrant application,
22 we have been through them all. We tried to take it
23 cautiously, because of course you can always keep
24 something secret and unseal it later, but you cannot do
25 it the other way round. So we tended to be protective.

1 It may be the reason we submitted it is that we were not
2 sure if the Chamber would take the same approach or
3 agree with that approach. But from our view those are
4 the redactions that we would request; they remain the
5 redactions we request.

6 I should inform your Honours that whenever we do
7 that exercise, we do produce internally a redacted
8 version. I am not sure that we submit it, but we would
9 always have available, if the Chamber were to request
10 it, a copy of what the document would look like in its
11 redacted form.

12 MR THE PRESIDING JUDGE SLADE: Because there are things that
13 one could regard as technical redactions. In every
14 warrant -- indeed in every document there is a provision
15 that this decision or this application remains under
16 seal until otherwise ordered. These would be rather
17 technical things. Are these to be redacted, for
18 instance?

19 They all impact on the mechanical work that needs to
20 be done, and I will shortly move to that line of
21 questioning.

22 MS CHUNG: In terms of that mechanical step, Mr President
23 and your Honours, we had actually proposed not to redact
24 it, because we think in the end, in terms of the
25 language of it being sealed, what happens then is that

1 it becomes confused in the record what exactly happened.
2 It is usually -- at least the times that I have seen it,
3 and in the experience of the ICTY cases I have seen, the
4 order remains the same, the order of the decision
5 remains the same. But then there should be an
6 indication on it that it was unsealed. So it may mean
7 a stamp on each page that says "Unsealed on such and
8 such a day". But for the clarity of the record and so
9 that the document is not altered too many times without
10 a trail of what got altered, it is usually better for
11 the document to remain, to continue to have the
12 paragraph that it is sealed, but then there to be an
13 indication on the face of the document itself that it
14 was later unsealed.

15 Or, another way to look at it, is that the record of
16 the different actions that were taken in a case will
17 show that: yes, although in its original form, its
18 July 8th form, it was sealed. The integrity of that
19 document should be maintained, because in fact the July
20 8th document was sealed. But then, either through
21 a stamp or some other indication -- and certainly the
22 Court order will reflect a later order saying that it
23 was unsealed. The trick is to have that later order
24 somehow superimposed on the appearance of the earlier
25 document.

1 Again, that is not to say that is the only way it
2 could be done, but that was just the way we thought best
3 preserved the integrity of the initial document while
4 making it clear that the document later was unsealed.
5 MR THE PRESIDING JUDGE SLADE: All right. Not counting
6 a number of documents -- the registration by the
7 Registry, for instance, documentation, transcripts of
8 the dialogue that the OTP and the Chamber had --
9 I myself had counted over 60 different documents, many
10 very large in size. Do you have a programme? It is
11 physically impossible if you insist on the 5th October
12 deadline, if the decision of the Chamber were to unseal
13 many of these documents.

14 Do you have in mind a programme of work? Are there
15 priority documents, again, if this deadline is to be
16 met, and if your application were to be granted?

17 MS CHUNG: Mr President and your Honours, I do not think it
18 was -- and this is why we did not put the same deadline
19 in that application -- I am not sure it was ever our
20 view that it would have to be concurrent. I think that
21 it could be, for example -- because it is, we have been
22 through it as well, I know how laborious it is.

23 It could be, for example, that when the warrants are
24 unsealed, if they are unsealed, that there be
25 a notification to the public "Other portions of the

1 Court record will become public in due course or by
2 another date." I do not think anybody would look at
3 that at being bizarre or untoward. When I look at the
4 ICTY case law there are many, many times when
5 indictments were unsealed but there was nothing in that
6 order itself about the unsealing of other court
7 proceedings.

8 So while I think there would be public interest,
9 I think one way to manage that might be to inform the
10 public: "The schedule for releasing the other documents
11 will be this schedule".

12 In terms of a priority of documents, I think the
13 ones that probably there will be the greatest interest
14 in, if I am looking at it from the public's right to
15 know, or the public's interest in knowing, might be the
16 legal issues that came up, the ones that are not so
17 susceptible for redaction or necessary to redact: the
18 Rule 176 issue.

19 There are some, like the Le Monde issue, we propose
20 that be unsealed. We do not have strong feelings about
21 that, however. I think the real issues that we feel are
22 the core issues are the witness protection redactions
23 and these discussions that we have had about
24 consultations and co-operation. But other than that we
25 did not really envision that it would happen

1 simultaneously, necessarily.

2 MR THE PRESIDING JUDGE SLADE: Then I need to ask you again,

3 or rather more directly this time: what, if any, are the

4 priority documents that the Office of the Prosecutor

5 seeks to be redacted?

6 MS CHUNG: Your Honour, could I reach for my copy of the

7 Annex, the index of the different documents? (Pause).

8 Mr President and your Honours, looking at the list,

9 and just going in chronological order: the initial

10 decisions of the Chamber to act as a full Chamber; the

11 extension of the page limit, these are decisions of the

12 Court; the decision to hold the hearing on the Rule 176

13 issue; the decision to hold the hearing on the

14 production of victims and witnesses in connection with

15 our application on the Le Monde issue; I think the

16 transcripts are maybe of a lesser order; and then the

17 decisions on the 176 issue moving forward and into the

18 appeal.

19 The criteria that I am applying are: I do think

20 there will be public interest and an interest on the

21 part of the Court to let the public know that there were

22 hearings in connection with the application; that the

23 topic of witness and victim protection was addressed by

24 the Court; that there were legal issues that came up

25 that were addressed by the Court. So in my mind these

1 are probably a higher order to disclose than some of
2 these other things.

3 MR THE PRESIDING JUDGE SLADE: And that was the purpose of
4 the question about criteria or principles in the
5 question to which Mr MacDonald had kindly responded.

6 Of the warrants of arrest, if the Chamber were to
7 grant the application to unseal, are these the
8 redactions that have been described: (Redacted)
9 (Redacted) are these
10 the only ones you need?

11 The Chamber needs to be totally satisfied that these
12 are the only critical ones for the protection of these
13 people. Please, Ms Chung.

14 MS CHUNG: Yes, Mr President, these are the only ones.

15 MR THE PRESIDING JUDGE SLADE: Thank you. Now, there is
16 this matter of the deadline, the 5th October. I have
17 asked if you had clear priorities, and you referred to a
18 range of documents. I have no idea what the mechanical
19 process is.

20 Certainly I can tell you this: the Chamber will need
21 to be satisfied, and it will conduct its own proceedings
22 to be satisfied of whatever it decides to unseal. And
23 we envisage a fairly pressing programme to keep the sort
24 of deadline that you seem to be insisting on.

25 Is this deadline a moveable deadline? Is it a dead

1 deadline? And why the significance of Wednesday
2 5th October and not Friday 7th or 8th October, please?
3 MS CHUNG: Mr President, the significance of the 5th October
4 date is, partly as I have indicated, we had initially
5 planned on the Wednesday before that; and then when this
6 movement into DRC happened, the engagement happened --
7 we have to have a target date. Because the way the
8 planning works, in terms of even the outreach, both
9 there in Uganda, all the planning in Uganda: notifying
10 the GOU, for example, (Redacted) has to be
11 up and up that day, that we are expecting that that is
12 their responsibility. So we picked a target date of
13 a week out because that was what we could foresee at the
14 time -- it was our best guess as to when we could do it
15 the next window.

16 We are ready for that date, but obviously even
17 coming here today I realise that it is very, very
18 time-pressured. What we were hoping to do is, if there
19 was authorisation from the Court even tomorrow -- to
20 unseal the warrant only -- we would try to implement on
21 Wednesday. Failing that, it would be the next day. So
22 we will move the date. Part of it depends on the UNDSS
23 notification and what can be done for UN staff that
24 needs to be done; although, as I mentioned, some of that
25 has already been adjusted upward because of the DRC

1 movement.

2 So we were going to accommodate ourselves that way,
3 with the strong preference for having some advanced
4 notification of the authorisation so that we could
5 implement as soon as is possible, as soon as is
6 practicable for the Court and for us.

7 We have never viewed the deadline to be applicable
8 to the other documents. It may be that if the Chamber
9 is inclined to do it all at one time, I can absolutely
10 see why that would appear to be much more burdensome; it
11 is much more burdensome.

12 I am just adjusting my mindset a little bit, because
13 that is not the way we had been thinking about it. But
14 if your Honours were to do that, one thing I could offer
15 which may facilitate the Chamber's work is we do have
16 the redacted versions, so we have proposed redacted
17 versions which we would be more than happy to furnish
18 the Chamber with. It at least helps visualise what the
19 documents would look like and where the redactions are.

20 The one item that is separate is the application.
21 Because of our request to keep the application for the
22 warrants sealed, we had not really pursued -- and this
23 is the first indication that I am getting that there
24 might be disagreement, that the Court's ruling would be
25 different. If so then obviously if we are asked to we

1 will submit a more redacted version along the lines of
2 what I was proposing.

3 MR THE PRESIDING JUDGE SLADE: On the two-day notification,
4 I think, that is required for the UN's Safety and
5 Security Department, give us some indication: is it that
6 already they have been notified of the existence of the
7 warrant, and of the persons named in the warrant? And
8 under these circumstances, is there still insistence on
9 the two-day notification period?

10 MS CHUNG: Mr President, I can be pretty concrete about
11 this, because we have talked to them a lot about this.
12 They do not know that the warrants -- they are not
13 necessary for the support of the warrants, so we did not
14 really see them as being authorised within the scope of
15 your Honour's prior ruling. We could give them this
16 notification.

17 I can say what they are planning to do -- one thing
18 they want to know about the warrants is who is named in
19 them. Because they think the security situation will be
20 worse if people who have already surrendered are named.
21 We know in this room that nobody fitting that
22 characteristic is named in the warrants. So the
23 security elevation that they need to do, or the risk
24 they are facing is not as high as in fact it is. They
25 are a little bit concerned about who is going to be

1 named in the warrants.

2 So one thing we could do with the Chamber's
3 authorisation is to let them know: in fact it will be
4 limited to people who are still in the bush. It is
5 nobody who is going to be arrested after they have
6 surrendered and are now reintegrated in society.

7 The thing they are planning to do concretely: after
8 the DRC movement of the LRA, they already are requiring
9 their staff to call back to the homebase to get
10 authorisation to move around in northern Uganda --
11 sorry, they are already advising their staff to do that,
12 to call in on a trip-by-trip basis.

13 What they are planning to do in response to
14 warrants -- because we have warned them that they may be
15 imminent, although we have not told them they are
16 coming -- what they are planning to do is just to make
17 that mandatory. So it is not a huge security step, but
18 it was one they had requested advance warning on.

19 That is why I think there is some flexibility. I am
20 not sure that it will take them the full two days,
21 because they have already adjusted a little bit to the
22 DRC situation. But we have not told them the whole
23 story yet, so I am not quite sure exactly what the
24 reaction will be.

25 MR THE PRESIDING JUDGE SLADE: Thank you. Allow me a moment

1 to seek consultations with their Honours. (Pause).

2 Very well. Thank you. Their Honours have no
3 supplemental questions to ask. We will of course need
4 to take the matter away and it make our determination.

5 I would need to say, and I have the concurrence of
6 my brethren to observe that, with respect to the United
7 Nations Department of Safety and Security, in our view
8 they seem to be covered in the decision that we had
9 already rendered last week, and that gave you the
10 authorisation to notify others, including an
11 inter-governmental organisation, of the existence of the
12 warrant, and the persons named in the warrants of
13 arrest. So it seems to us that that need not be an
14 additional problem while we turn to give the most
15 serious consideration to your application, which of
16 course we will do.

17 MS CHUNG: Thank you, Mr President.

18 MR THE PRESIDING JUDGE SLADE: All right.

19 There is a matter of the letter to Madam Bigombe, if
20 you could see to the submission of that to the
21 Registrar. We appreciate the additional information
22 forthcoming from the Office of the Prosecutor, from the
23 Registrar of the Court, and from the Victims and
24 Witnesses Unit.

25 Madam Registrar, would you kindly adjourn this

1 status conference, please.

2 THE USHER: All rise.

3 The hearing is adjourned at 6.09 pm.

4 RECLASSIFICATION REPORT

5 Pursuant to Pre-Trial Chamber II's Order ICC-02/04-01/15-245, dated 11th June 2015,

6 this transcript with its redactions is reclassified as "Public"

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25