



Original : English

No.: ICC-02/04-01/05  
Date: 31 October 2006

**PRE-TRIAL CHAMBER II**

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

**Registrar:** Mr Bruno Cathala

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

**Public Document**

**DECISION ON THE PROSECUTOR'S REQUEST TO SEPARATE THE SENIOR  
LEGAL ADVISER TO THE PRE-TRIAL DIVISION FROM RENDERING LEGAL  
ADVICE REGARDING THE CASE**

**The Office of the Prosecutor**

Mr. Luis Moreno Ocampo, Prosecutor  
Ms. Christine Chung, Senior Trial  
Lawyer  
Mr. Eric MacDonald, Trial Lawyer

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

**NOTING** the “Notice of OTP Request Addressed to the Presidency” dated 10 January 2006<sup>1</sup>, whereby the Prosecutor informed the Chamber that it had requested to the Presidency the “imposition of a preventive measure, and a provisional measure” while the request was pending, with the aim of preventing future challenges by any party to the appearance of impartiality of the judges of the Pre-Trial Division”, and made reference to article 41, paragraph 2(a) of the Statute of the Court (“the Statute”);

**NOTING** the “Prosecutor’s Application to Separate the Senior Legal Adviser to the Pre-Trial Division from rendering Legal Advice Regarding the Case” dated 31 August 2006<sup>2</sup> (“the Prosecutor’s Application”), whereby the Prosecutor requested (i) that the Senior Legal Adviser to the Pre-Trial Division, Mr. Gilbert Bitti, be separated from rendering legal advice to the Chamber in the case *The Prosecutor vs Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo and Dominic Ongwen* (“the Case”), due to “his previous involvement in the same case while employed as Legal Adviser” to the Office of the Prosecutor (“OTP”); (ii) that an *ad hoc* defense counsel be appointed for the purpose of giving views on the Prosecutor’s Application on behalf of future accused persons in the Case, and (iii) that the Senior Legal Adviser be separated from the Case pending the determination of the Application by the Chamber;

**NOTING** article 41, paragraph 2, of the Statute and rule 4, sub-rule 2 of the Rules of Procedure and Evidence (“the Rules”);

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<sup>1</sup> ICC-02/04-01/05-75.

<sup>2</sup> ICC-02/04-01/05-108.

**NOTING** the “Request by the President of the Pre-Trial Division, on behalf of the Judges of the Pre-Trial Chamber I and Pre-Trial Chamber II, to the President of the Court to convene the Plenary” dated 20 October 2006 (Annex 1), whereby the President of the Pre-Trial Division, on behalf of the Judges of Pre-Trial Chamber I and Pre-Trial Chamber II, requested the President to convene a special plenary session of the judges to examine and, as appropriate, determine whether the Prosecutor’s Application, as well as other related Prosecutor’s initiatives, amounted to a request for disqualification of the judges of Pre-Trial Chambers I and II under article 41(2)b of the Statute, or to a “question as to the disqualification of a judge” within the meaning of article 41(2)c of the Statute “and, if so, to decide on the matter”;

**NOTING** the letter by the Presiding Judge of the Chamber to the President of the Pre-Trial Division dated 20 October 2006 (Annex 2), confirming the agreement of the judges of the Chamber that the Senior Legal Adviser “*ex abundanti cautela* be temporarily relieved from any functions” he may have in relation to the Case “until further notice”;

**NOTING** the “Decision by the President of the Pre-Trial Division at the request of the judges of Pre-Trial Chambers I and II to separate the Senior Legal Adviser from any functions he might have in relation to the case of the Prosecutor vs. Thomas Lubanga Dyilo and the case of the Prosecutor vs. Joseph Kony et al.” dated 20 October 2006 (Annex 3), whereby the President of the Pre-Trial Division implemented the request by the Presiding Judge of the Chamber, as well as the “Administrative Decision” (Annex 4)<sup>3</sup>, whereby on the same day the President of the Pre-Trial Division decided *inter alia* that no submissions relating to the Case would thenceforth be communicated to the Senior Legal Adviser until further notice;

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<sup>3</sup> “Administrative Decision by the President of the Pre-Trial Division concerning the communication of submissions relating to the Case of the Prosecutor vs. Thomas Lubanga Dyilo and the Case of the Prosecutor vs. Joseph Kony et al. to the Senior Legal Adviser to the Pre-Trial Division” (ICC-PTD-01-06).

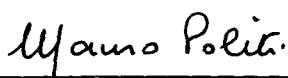
**CONSIDERING** that, as stated above, the issue of the separation of the Senior Legal Adviser was addressed by the President of the Pre-Trial Division in the Decision dated 20 October 2006;

**CONSIDERING** further that the Prosecutor's Application may be construed as amounting to a request for disqualification of the judges or as a "question as to the disqualification of a judge", as such to be decided by an absolute majority of the judges, in accordance with article 41, paragraph 2 of the Statute;

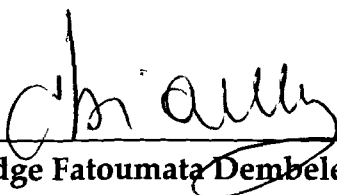
**HAVING REGARD THERETO AND FOR THESE REASONS, THE CHAMBER HEREBY**


**DISMISSES** the Prosecutor's Application.

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



**Judge Mauro Politi**  
**Presiding Judge**

  
**Judge Fatoumata Dembele Diarra**

  
**Judge Ekaterina Trendafilova**

Dated this 31<sup>st</sup> day of October 2006

At The Hague, The Netherlands

## List of annexes

- Annex 1* Request by the President of the Pre-Trial Division, on behalf of the Judges of the Pre-Trial Chamber I and Pre-Trial Chamber II, to the President of the Court to convene the Plenary (20 October 2006)
- Annex 2* Letter by the Presiding Judge of Pre-Trial Chamber II to the President of the Pre-Trial Division (20 October 2006)
- Annex 3* Decision by the President of the Pre-Trial Division at the request of the judges of Pre-Trial Chambers I and II to separate the Senior Legal Adviser from any functions he might have in relation to the case of the Prosecutor vs. Thomas Lubanga Dyilo and the case of the Prosecutor vs. Joseph Kony et al. (20 October 2006)
- Annex 4* Administrative Decision by the President of the Pre-Trial Division concerning the communication of submissions relating to the Case of the Prosecutor vs. Thomas Lubanga Dyilo and the Case of the Prosecutor vs. Joseph Kony et al. to the Senior Legal Adviser to the Pre-Trial Division (20 October 2006)