

**Cour
Pénale
Internationale**
**International
Criminal
Court**

No.: ICC-02/04

Date: 17 June 2005

Original: English

PRE-TRIAL CHAMBER II

**Before: Judge Tuiloma Neroni Slade
Judge Mauro Politi
Judge Fatoumata Dembele Diarra**

Registrar: Mr Bruno Cathala

SITUATION IN UGANDA

**Under Seal
Ex Parte, Prosecutor only**

**DECISION ON THE "PROSECUTOR'S APPLICATION TO DISCLOSE TO
INTERNAL AUDITOR CERTAIN INFORMATION RELATING TO THE
AMENDED APPLICATION FOR WARRANTS" DATED 13 JUNE 2005**

The Office of the Prosecutor

Mr Luis Moreno Ocampo, Prosecutor
Mrs Fatou Bensouda, Deputy Prosecutor
Ms Christine Chung, Senior Trial Lawyer
Mr Eric MacDonald, Trial Lawyer

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

NOTING the “Prosecutor’s application for Warrants of Arrest under Article 58” dated the 6th day of May 2005, as amended and supplemented by the Prosecutor on the 13th day of May 2005 and on the 18th day of May 2005 (the “Prosecutor’s application”), and the request made that all the proceedings relating thereto be treated as and kept under seal, with a view to ensuring that vulnerable groups in Uganda, including victims and persons living in areas mentioned in the application, are not put at risk as a result of the Prosecutor’s application;

SITTING as the full Chamber, pursuant to the Chamber’s decision on the 18th day of May 2005;

NOTING the “Prosecutor’s Application To Disclose to Internal Auditor Certain Information Relating to the Amended Application for Warrants” dated the 13th day of June 2005 (the “Application dated the 13th day of June 2005”);

NOTING that the Application dated the 13th day of June 2005 is made as a result of an article published in the French newspaper *Le Monde* on the 11th day of June 2005, which reported that the Prosecutor has sought warrants of arrest against members of the Lord’s Resistance Army (the “*Le Monde* incident”), as well as other similar press reports, including reports in the Ugandan press;

NOTING that in its Application dated the 13th day of June 2005 the Prosecutor requests that Pre-Trial Chamber II approve the disclosure to the Court's Internal Auditor of certain information relating to the Prosecutor's application, "for the limited purpose of enabling the Internal Auditor to investigate independently who, if anyone, on the staff of any of the organs of the Court disclosed to the French newspaper *Le Monde* that the OTP has requested warrants of arrest naming members of the Lord's Resistance Army";

NOTING the references in the Application dated the 13th day of June 2005 to the "extremely damaging case-related consequences" of the dissemination of information about the Prosecutor's application, including the "increased danger" for "victims, witnesses" and persons "investigated by the OTP" or "believed to have provided information to OTP", and the concern that persons who have cooperated in the investigation will "be at risk of retaliation ... because the implementation of increased security measures has not yet been completed";

NOTING that the Chamber has so far treated the Prosecutor's application and all the proceedings relating thereto as *ex parte* and under seal, pursuant to the Prosecutor's request;

CONSIDERING that any disclosure, albeit limited in its scope, would result in the very existence of the Prosecutor's application, as well as possibly details of it, being made available and thereby becoming known to a wider circle of persons;

CONSIDERING, in particular, that the Internal Auditor would need to establish contacts with an indeterminate and potentially significant number of persons for him or her properly to carry out any investigation;

CONSIDERING that there is potential that any internal audit at this stage may entail an increased risk that further incidents of the same kind as the *Le Monde* incident might occur and that the above mentioned dangers for victims and witnesses will further escalate;

NOTING that the Prosecutor has taken steps to respond to the *Le Monde* incident through his message to the staff of the Court dated the 13th day of June, reminding staff members of their confidentiality obligations and other duties vis-à-vis the Court and highlighting the security risks for victims and witnesses which might be entailed by unauthorized disclosure of information to external sources;

CONSIDERING that the staff of the Court will therefore have been put on alert as to their obligation to prevent other incidents such as the *Le Monde* incident from occurring;


CONSIDERING that the procedure for an internal audit could be postponed to a time when the Prosecutor's application and the proceedings relating thereto are no longer under seal and therefore publicly accessible;

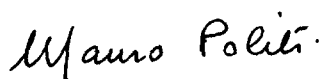
FOR THESE REASONS:

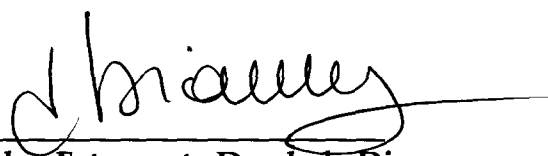
REJECTS the Prosecutor's request that the Chamber approve the disclosure to the Court's Internal Auditor of certain information relating to the Prosecutor's application;

ORDERS that this decision be kept under seal, until further order by the Chamber.

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


Judge Tuiloma Neroni Slade
Presiding Judge


Judge Mauro Politi


Judge Fatoumata Dembele Diarra

Dated this 17th day of June 2005

At The Hague, The Netherlands

Seal of the Court