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Note to Mr. Pascoe

Draft Final Peace Agreement, Juba Sudan

1. This is in reference to your Note of 28 February 2008 requesting our comments on the draft Final Peace Agreement between the Government of Uganda and the Lord's Resistance Army/Movement. Given the urgency of the matter we limit our comments to the most essential features of the Agreement, and those pertaining to the United Nations, in particular.

2. Under the draft Agreement, the UN is involved, through the person of the SESG, in the Oversight Forum, and through his Office in Kampala, in providing technical and secretariat support to the Oversight Forum. Under paragraph 14(b), the SESG shall be a member of the Forum and "shall speak" on its behalf. We note that for the Special Envoy actively to participate in the Forum, it is not enough that he be designated as such by the Parties, it is also necessary that he be appointed to do so by the Secretary-General.

3. Paragraph 21 of the draft Agreement provides that:

> "The Office of the SESG in Kampala shall provide technical and secretariat support to the Oversight Forum"(emphasis added).

As the Parties to the Agreement cannot impose any obligations upon the Secretary-General to commit the resources of his Office in support of the Oversight Forum, paragraph 21 will have to be modified to read: "The Parties shall request the Secretary-General to provide technical and secretariat support to the Oversight Forum through the Office of the SESG in Kampala". It will then be for the Secretary-General to seek the necessary mandate and budgetary authorization for such a commitment.

4. Paragraphs 39 and 40 of the draft Agreement deal with the crux of the accountability and reconciliation mechanisms. Under paragraph 39, the Government shall take immediate steps to commence criminal investigations and establish the Special Division of the High Court, on which basis, according to paragraph 40, it shall request the Security Council to adopt a Chapter VII resolution requesting the ICC to defer all investigations and prosecutions against the leaders of the LRA.

5. Paragraph 40 creates the impression that a Security Council resolution, if and when adopted at the request of the Government of Uganda, would 'defer' all investigations and prosecutions and thus 'dispose' of the matter. While the Security Council, under Article 16 of the ICC Statute, can temporarily suspend all

investigations and prosecutions, a decision on deferral of the case to Ugandan courts, can only be made by the competent ICC Pre-Trial Chamber. It would, therefore, be advisable to modify paragraph 40 to include the following sentence: "In respect of Uganda's obligations under the ICC Statute and the principle of complementarity, in particular, and on the basis of the steps taken under the above paragraph, the Government shall request etc…". The added sentence would thus refer to Uganda's Statutory obligations to approach the ICC, without explicitly mentioning it in the Agreement.

6. In this connection, we should also note that today Pre-Trial Chamber II of the ICC has issued a Request for Information from the Republic of Uganda on the status of execution of the warrants of arrest in the case of the LRA indicted leaders. It requested Uganda to inform the Court of steps taken to implement the Accountability and Reconciliation Agreement and its Annexure, of the powers and competences attributed to the Special Division of the High Court, the categories of offences and alleged perpetrators addressed by the different justice mechanisms, and the impact of the Special Division on the execution of the warrants and on Uganda's cooperation with the Court (copy attached).

7. The Request for Information is, in our view, an invitation to engage in a direct dialogue with the Court, which the Government of Uganda will be well-advised to accept.

8. In conclusion, for SESG Chissano to sign as a witness, paragraph 21 in its present formulation will have to be modified, as indicated. On the other hand, if paragraph 40 is maintained, SESG Chissano may still sign, but he should then affix to his signature the following statement: "The United Nations recalls Uganda's international obligations under the ICC Statute, including with respect to the principle of complementarity".

N. Michel

Nicolas Michel

29 February 2008

cc: Mr. Nambiar
Ms. Arbour
Mr. Guéhenno
Mr. Holmes

Cour
Pénale
Internationale

International
Criminal
Court

Original : **English**

No.: **ICC-02/04-01/05**
Date: **29 February 2008**

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, DOMINIC ONGWEN

Public Document

Request for Information from the Republic of Uganda on the Status of Execution of the Warrants of Arrest

The Office of the Prosecutor
Mr Luis Moreno Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Eric MacDonald, Trial Lawyer

The Government of the Republic of Uganda

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

RECALLING the warrant of arrest for Joseph KONY, issued by the Chamber on 8 July 2005, as amended on 27 September 2005,[1] and the warrants of arrest issued for Vincent OTTI,[2] Okot ODHIAMBO,[3] and Dominic ONGWEN[4] on 8 July 2005 (the "Warrants");

RECALLING the request for arrest and surrender of Joseph KONY, dated 8 July 2005, as amended on 27 September 2005,[5] and the requests for arrest and surrender of Vincent OTTI,[6] Okot ODHIAMBO,[7] Dominic ONGWEN[8] to the Republic of Uganda, dated 8 July 2005;

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

NOTING the "Annexure to the Agreement on Accountability and Reconciliation signed between the Government of the Republic of Uganda and the Lord Resistance Army" on 19 February 2008 (the "Annexure");

NOTING articles 86, 87 and 93 of the Rome Statute of the Court (the "Statute"), setting forth the obligation of States Parties to cooperate fully with the Court in any matter related to the investigation and prosecution of crimes within its jurisdiction and the modalities for such cooperation;

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[1] ICC-02/04-01/05-53.
[2] ICC-02/04-01/05-54.
[3] ICC-02/04-01/05-56.
[4] ICC-02/04-01/05-57.
[5] ICC-02/04-01/05-29-US-Exp, reclassified as public pursuant to Decision ICC-02/04-01/05-135.
[6] ICC-02/04-01/05-13-US-Exp, reclassified as public pursuant to Decision ICC-02/04-01/05-135.
[7] ICC-02/04-01/05-15-US-Exp, reclassified as public pursuant to Decision ICC-02/04-01/05-135.
[8] ICC-02/04-01/05-16-US-Exp, reclassified as public pursuant to Decision ICC-02/04-01/05-135.

NOTING, in particular, article 87(7) of the Statute, according to which, where a State Party fails to comply with a request to cooperate, the Court may make a finding to that effect and refer the matter to the Assembly of States Parties;

NOTING rule 176(2) of the Rules of Procedure and Evidence of the Court and regulation 46(2) of the Regulations of the Court which respectively deal with, *inter alia*, communication with requesting States concerning requests for cooperation and the responsibility of the Pre-Trial Chamber for any matter, request or information arising out of a situation;

NOTING that, under the Annexure,[9] "... the government shall expeditiously prepare and develop the necessary legislation and modalities for implementing the principle agreement and this annexure";

NOTING also that, pursuant to the Annexure, the Republic of Uganda "shall establish a unit" to carry out investigations and prosecutions especially against individuals who are alleged to have planned or committed widespread, systematic, or serious attacks directed against civilians, or who have allegedly committed grave breaches of the Geneva Conventions;

NOTING further that the Annexure foresees the establishment of a "special division of the High Court (...) to try individuals who are alleged to have committed serious crimes during the conflict";

NOTING lastly that, under the Annexure, the "...Government [of Uganda] shall ensure that serious crimes committed during the conflict are addressed by the special Division of the High Court; traditional justice mechanisms; and any other alternative justice mechanism established under the principal agreement...";

[9] http://monitor.co.ug/artman/publish/news/Details_of_Government_LRA_agreement.shtml.

CONSIDERING that, in light of these developments, and in order to ensure the efficient conduct of the proceedings before the Court, it is necessary for the Chamber to receive information from the Republic of Uganda on the impact of the Annexure on Uganda's cooperation with respect to the execution of the Warrants;

FOR THESE REASONS,

REQUESTS the Republic of Uganda to provide the Chamber, at the earliest convenience, preferably no later than 28 March 2008, with detailed information on the implications of the Annexure on the execution of the Warrants and, in particular, on the following issues:

a) The steps that the Republic of Uganda has undertaken or intends to undertake with a view to implementing the Principal Agreement and the Annexure;

b) The exact competence attributed to the special division of the High Court of Uganda and specifically, the competence *ratione materiae* and *ratione personae*;

c) The categories of offences and alleged perpetrators addressed by the traditional justice mechanisms and other alternative justice mechanisms referred to in the Annexure;

d) The impact of the establishment of the special division of the High Court of Uganda and of recourse to traditional justice mechanisms or other alternative justice mechanisms on the execution of the Warrants and on the cooperation provided by the Republic of Uganda to the Court for their execution.

ORDERS the Registrar to transmit promptly this request to the Government of the Republic of Uganda.

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

Judge Mauro Politi
Presiding Judge

Judge Fatoumata Dembele Diarra

Judge Ekaterina Trendafilova

Dated this Friday, 29 February 2008

At The Hague, The Netherlands