

**Cour
Pénale
Internationale**

**International
Criminal
Court**

No.: ICC-02/04

Date: 8 July 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

Public redacted version

WARRANT OF ARREST FOR RASKA LUKWIYA

The Office of the Prosecutor

Mr Luis Moreno Ocampo, Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor

Ms Christine Chung, Senior Trial Lawyer

Mr Eric MacDonald, Trial Lawyer

1. **PRE-TRIAL CHAMBER II** (the “Chamber”) of the International Criminal Court (the “Court”), sitting as the full Chamber pursuant to its decision on the 18th day of May 2005, to which, on the 5th day of July 2004, the Presidency assigned the situation in Uganda pursuant to regulation 46 of the Regulations of the Court (the “Regulations”);
2. **HAVING RECEIVED** 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 having considered it on the basis of the amended application of the 18th day of May 2005;
3. **NOTING** the Prosecutor’s request to be authorised to exceed the 50-page limit for his application for the issuance of warrants of arrest and the Chamber’s decision on the 18th day of May 2005 granting the request;
4. **NOTING** that the Prosecutor’s application seeks a warrant of arrest for **RASKA LUKWIYA** for the crimes listed under Counts 6 to 9, as set out in the Prosecutor’s application, as well as warrants of arrest for four other persons named in the Prosecutor’s application;

The Lord’s Resistance Army (the “LRA”)

5. **CONSIDERING** the general allegations presented in the Prosecutor’s application that the LRA is an armed group carrying out an insurgency against the Government of Uganda and the Ugandan Army (also known as

the Uganda People's Defence Force ("UPDF")) and local defence units ("LDUs") since at least 1987; that over this time, including the period from 1 July 2002, the LRA has been directing attacks against both the UPDF and LDUs and against civilian populations; that, in pursuing its goals, the LRA has engaged in a cycle of violence and established a pattern of "brutalization of civilians" by acts including murder, abduction, sexual enslavement, mutilation, as well as mass burnings of houses and looting of camp settlements; that abducted civilians, including children, are said to have been forcibly "recruited" as fighters, porters and sex slaves to serve the LRA and to contribute to attacks against the Ugandan army and civilian communities;

6. **CONSIDERING** that the existence and acts of the LRA, as well as their impact on Uganda's armed forces and civilian communities, have been reported by the Government of Uganda and its agencies and by several independent sources, including the United Nations, foreign governmental agencies, non-governmental organisations and world media;
7. **CONSIDERING** the allegations that the LRA was founded and is led by Joseph Kony, the Chairman and Commander-in-Chief, and that the LRA is organised in a military-type hierarchy and operates as an army;
8. **CONSIDERING** the allegations that LRA forces are divided into four brigades named Stockree, Sinia, Trinkle and Gilva, and that since July 2002 the LRA's hierarchy of posts under Joseph Kony's overall leadership has included Vincent Otti, the Vice-Chairman and Second-in-Command; **RASKA LUKWIYA**, the Army Commander who formerly occupied the posts of Brigade General and Deputy Army Commander; the Division Commander

and four Commanders of equal rank, each of whom leads one of the four LRA brigades;

9. **CONSIDERING** the specific allegations that Joseph Kony, Vincent Otti and other senior LRA commanders, including **RASKA LUKWIYA**, are the key members of “Control Altar”, the section representing the core LRA leadership responsible for devising and implementing LRA strategy, including standing orders to attack and brutalise civilian populations;
10. **HAVING EXAMINED** the Prosecutor’s submission that, in his capacity as the former Deputy Army Commander of the LRA, and together with other persons whose arrests are sought by the Prosecutor, **RASKA LUKWIYA** ordered the commission of several crimes within the jurisdiction of the Court during REDACTED 2003;
11. **CONSIDERING** that sources indicated by the Prosecutor as confirming **RASKA LUKWIYA**’s role within the LRA’s leadership include recordings of intercepted radio communications, accounts from former members of the LRA and accounts from witnesses and victims;
12. **CONSIDERING** the Prosecutor’s allegations that, in or around the middle of the year 2002, Joseph Kony ordered LRA forces to begin a campaign of attacks against civilians in the regions of REDACTED and REDACTED; that, in REDACTED 2003, Joseph Kony ordered LRA fighters, known also as rebels, to move into the REDACTED region, attack the UPDF forces and civilian settlements and abduct civilians for the purpose of recruitment to the ranks of the LRA (the “REDACTED campaign”); that, in response to Joseph

Kony's orders, senior LRA commanders, including Vincent Otti and **RASKA LUKWIYA**, moved into the REDACTED region to conduct LRA operations; that LRA operations also continued to be conducted in the REDACTED region; that REDACTED 2003, Joseph Kony issued broad orders to target and kill civilian populations, including those living in camps for internally displaced persons ("IDP"); that, during the REDACTED campaign and other LRA operations, there existed standing orders, given by Joseph Kony, to loot and to abduct civilians; that **RASKA LUKWIYA**'s direct involvement with the objectives and strategies of the campaign as a whole is shown by recordings of intercepted radio communications, accounts from former members of the LRA and accounts from witnesses and victims;

13. **NOTING** that the Prosecutor's application charges **RASKA LUKWIYA** with criminal responsibility for the attack on the REDACTED IDP Camp REDACTED mentioned hereafter forming part of the REDACTED campaign and having occurred in REDACTED 2003;

14. **NOTING** that the Prosecutor charges **RASKA LUKWIYA** with a crime against humanity and war crimes, as specified in Counts 6 to 9 of his application, in connection with the attack on the REDACTED IDP Camp;

Attack on REDACTED IDP Camp

15. **NOTING** that the Prosecutor alleges that, on REDACTED 2003, "REDACTED fighters" attacked the REDACTED IDP Camp REDACTED, in the REDACTED District, abducted civilians and forced them to carry looted items; that, according to Ugandan authorities, the attack resulted in the death

of REDACTED civilians and in the abduction of REDACTED civilians, REDACTED;

16. **NOTING** that the evidence submitted, including accounts from REDACTED and intercepted radio communications, suggests that **RASKA LUKWIYA** was the most senior LRA commander to receive orders from Vincent Otti before the attack on the REDACTED IDP Camp; that **RASKA LUKWIYA** proceeded to the scene of the attack and commanded the LRA forces that were present; and that accounts from REDACTED confirm **RASKA LUKWIYA**'s presence during the attack;
17. **NOTING** article 58 and article 19 of the Statute of the Court (the "Statute");
18. **NOTING** the letter of referral dated the 16th day of December 2003 from the Attorney General of the Republic of Uganda, appended as Exhibit A to the Prosecutor's application, by which the "situation concerning the Lord's Resistance Army" in northern and western Uganda was submitted to the Court;
19. **NOTING** the Prosecutor's conclusion that "the scope of the referral encompassed all crimes committed in Northern Uganda in the context of the ongoing conflict involving the LRA" and that the Prosecutor notified the Government of Uganda of his conclusion as referred to in paragraph 1 of the Prosecutor's application;

20. **NOTING** the “Declaration on Temporal Jurisdiction”, dated the 27th day of February 2004, appended as Exhibit B to the Prosecutor’s application, whereby the Republic of Uganda accepted the exercise of the Court’s jurisdiction for crimes committed following the entry into force of the Statute on the 1st day of July 2002;
21. **NOTING** the “Letter on Jurisdiction” dated the 28th day of May 2004 from the Solicitor-General of the Republic Uganda to the Prosecutor, appended as Exhibit C to the Prosecutor’s application;
22. **NOTING** that all of the crimes alleged against **RASKA LUKWIYA** fall within the provisions of articles 5, 7 and 8 of the Statute, and that such crimes are alleged to have taken place after the 1st day of July 2002 and within the context of the situation in Uganda as referred to the Court;
23. **NOTING** the Prosecutor’s determination that the requirements of article 53, paragraph 1, of the Statute were satisfied;
24. **NOTING** that the Prosecutor affirms in paragraph 3 of the application that letters of notification were distributed to “all States parties under article 18, paragraph 1, of the Statute, as well as to other States that would normally exercise jurisdiction”; and that the Prosecutor had not received from any State information pursuant to article 18, paragraph 2, of the Statute;

25. **NOTING** the statements in the “Letter of Jurisdiction” dated the 28th day of May 2004, that “the Government of Uganda has been unable to arrest ... persons who may bear the greatest responsibility” for the crimes within the referred situation; that “the ICC is the most appropriate and effective forum for the investigation and prosecution of those bearing the greatest responsibility” for those crimes; and that the Government of Uganda “has not conducted and does not intend to conduct national proceedings in relation to the persons most responsible”;
26. **BEING SATISFIED** that, on the basis of the application, the evidence and other information submitted by the Prosecutor, and without prejudice to subsequent determination, the case against **RASKA LUKWIYA** falls within the jurisdiction of the Court and appears to be admissible;
27. **NOTING** articles 5, 7 and 8 of the Statute setting out crimes against humanity and war crimes; and noting also the Elements of Crimes;
28. **NOTING** the evidence submitted by the Prosecutor in support of the existence of the contextual elements of the alleged crimes;
29. **NOTING** that the Prosecutor relies on several categories of evidence to support the allegations made in his application;
30. **BEING SATISFIED**, on the basis of the application, the evidence and other information submitted by the Prosecutor, that there are reasonable grounds to

believe that **RASKA LUKWIYA**, together with other persons whose arrests are sought by the Prosecutor, ordered the commission of crimes within the jurisdiction of the Court, namely, a crime against humanity and war crimes, particulars of which are set out in the following counts as numbered in the Prosecutor's application:

Count Six

(Enslavement at REDACTED IDP Camp Constituting Crimes Against Humanity)

On REDACTED 2003, ordering the commission of crimes against humanity which in fact occurred, namely, the enslavement of REDACTED civilian residents of REDACTED IDP Camp, in REDACTED District, Uganda (articles 7(1)(c) and 25(3)(b) of the Statute);

Count Seven

(Cruel Treatment at REDACTED IDP Camp Constituting War Crimes)

On REDACTED 2003, ordering the commission of war crimes which in fact occurred, namely, the cruel treatment of civilian residents of REDACTED IDP Camp, by abducting them, tying or otherwise restraining them, and forcing them, under threat of death, to carry plundered property, in REDACTED District, Uganda (articles 8(2)(c)(i) and 25(3)(b) of the Statute);

Count Eight

(Attack Against the Civilian Population at REDACTED IDP Camp Constituting War Crime)

On REDACTED 2003, ordering the commission of a war crime which in fact occurred, namely, the intentional directing of attacks against the civilian population of REDACTED IDP Camp, in REDACTED District, Uganda, and against individual civilians not taking direct part in hostilities (articles 8(2)(e)(i) and 25(3)(b) of the Statute);

Count Nine

(Pillaging at REDACTED IDP Camp Constituting War Crimes)

On REDACTED 2003, ordering the commission of war crimes which in fact occurred, namely, the pillaging of REDACTED IDP Camp, in REDACTED District, Uganda (articles 8(2)(e)(v) and 25(3)(b) of the Statute);

31. **NOTING** the reasons advanced by the Prosecutor as to the necessity for arrest, namely, to ensure **RASKA LUKWIYA**'s appearance at trial; to ensure that he does not obstruct or endanger the investigation, either individually or on a collective basis; and to prevent him from continuing to commit crimes within the jurisdiction of the Court;
32. **BEING SATISFIED** that the issuance of a warrant of arrest appears necessary based on the facts and circumstances referred to in the Prosecutor's application, namely that the LRA has been in existence for the past 18 years; and that the LRA's commanders are allegedly inclined to launch retaliatory strikes, thus creating a risk for victims and witnesses who have spoken with or provided evidence to the Office of the Prosecutor;
33. **NOTING** the statements made by the Prosecutor at the hearings on the 16th day of June 2005 and the 21st day of June 2005 to the effect that attacks by the LRA are still occurring and that there is therefore a likelihood that failure to arrest **RASKA LUKWIYA** will result in the continuation of crimes of the kind described in the Prosecutor's application;
34. **NOTING** the Prosecutor's request that the application and all proceedings relating thereto be treated as under seal and be kept under seal;

FOR THESE REASONS,

35. **PRE-TRIAL CHAMBER II GRANTS** the Prosecutor's application for a warrant of arrest for **RASKA LUKWIYA** pursuant to article 58 of the Statute and **HEREBY ISSUES:**

36. **A WARRANT OF ARREST** (the "Warrant") for the **SEARCH, ARREST, DETENTION AND SURRENDER** to the Court of **RASKA LUKWIYA**, a male whose photograph is annexed; who is believed to have served in the LRA successively as Brigade General, Deputy Army Commander and Army Commander, the latter being the third highest position within the LRA; and who is believed to be a national of Uganda from the Gulu District, Uganda;

37. **ORDERS** that the said **RASKA LUKWIYA** be advised at the time of his arrest, and in a language he fully understands and speaks, of his rights as set forth in the following provisions of the Statute and the Rules of Procedure and Evidence, the texts of which are annexed to the Warrant:

- article 19, paragraph 2 (challenges to the jurisdiction of the Court or the admissibility of a case);
- article 55, paragraph 2 (rights of persons during an investigation);
- article 57 (functions and powers of the Pre-Trial Chamber);
- article 59 (arrest proceedings in the custodial State);
- article 60 (initial proceedings before the Court);
- article 61 (confirmation of the charges before trial);

- article 67 (rights of the accused);
- rule 21 (assignment of legal assistance);
- rule 112 (recording of questioning in particular cases);
- rule 117 (detention in the custodial State);
- rule 118 (pre-trial detention at the seat of the Court);
- rule 119 (conditional release);
- rule 120 (instruments of restraint);
- rule 121 (proceedings before the confirmation hearing);
- rule 122 (proceedings at the confirmation hearing in the presence of the person charged);
- rule 123 (measures to ensure the presence of the person concerned at the confirmation hearing);
- rule 124 (waiver of the right to be present at the confirmation hearing);
- rule 187 (translation of documents accompanying request for surrender);

38. **ORDERS** that the Warrant shall remain in effect until further order by the Chamber;

39. **AUTHORISES** the Warrant to be made available and disclosed to persons or entities designated by the authorities of the State requested in the Request for Arrest and Surrender and only for the purposes of the execution of the Warrant;

40. **ORDERS** that the Warrant, in all other respects, be kept under seal until further order by the Chamber;

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

signed

Judge Tuiloma Neroni Slade
Presiding Judge

signed

Judge Mauro Politi

signed

Judge Fatoumata Dembele Diarra

Dated this 8th day of July 2005

At The Hague, The Netherlands

Seal of the Court