

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-02/06

Date: 28 April 2008

PRE-TRIAL CHAMBER I

Before: Judge Akua Kuenyehia, Presiding Judge
Judge Anita Ušacka
Judge Sylvia Steiner

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO
IN THE CASE OF
THE PROSECUTOR *v.* BOSCO NTAGANDA**

Public Document

**DECISION TO UNSEAL THE WARRANT OF ARREST AGAINST
BOSCO NTAGANDA**

Decision to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor
 Mr Luis Moreno Ocampo, Prosecutor
 Mr Ekkehard Withopf, Senior Trial
 Lawyer

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
 Participation/Reparation**

**The Office of Public Counsel for
 Victims**

**The Office of Public Counsel for the
 Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar
 Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit
 Mr Simo Väättäinen

Detention Section

**Victims Participation and Reparations
 Section**

Other

PRE-TRIAL CHAMBER I of the International Criminal Court (“the Chamber” and “the Court,” respectively);

NOTING the “Prosecution’s Application for Warrants of Arrest, article 58”¹ (the Prosecution’s Application for the Warrant of Arrest) filed by the Prosecution on 12 January 2006, in which the Prosecution requested, *inter alia*, the issuance of an warrant of arrest against Bosco Ntaganda and indicated that it has a strong preference the Prosecution’s Application for the Warrant of Arrest and the Chamber’s decision on the warrant of arrest remain under seal;

NOTING the “*Décision relative à la requête de l’Accusation aux fins de délivrance d’un mandat d’arrêt*”² (“the Decision”) issued on 22 August 2006 whereby the Chamber issued a warrant of arrest against Bosco Ntaganda;

NOTING the warrant of arrest against Bosco Ntaganda³ issued by the Chamber on 22 August 2006;

NOTING the “Prosecution’s Application for Unsealing the Arrest Warrant against Bosco Ntaganda”⁴ (“the Prosecution Application”) filed by the Prosecution on 29 February 2008;

NOTING the confidential *ex parte* hearing held before the Chamber on 23 April 2008, in which the Prosecution extended the Prosecution Application⁵ for unsealing to the decisions of 10 February 2006⁶ and of 22 August 2006;⁷

¹ ICC-01/04-98-US-Exp

² ICC-01/04-02/06-1-US

³ ICC-01/04-02/06-2-US

⁴ ICC-01/04-02/06-15-US-Exp

⁵ ICC-01/04-02/06-T-1-US-ENG, page 20, from line 11

NOTING articles 57 (3) (c), 67 (1) and 68 (1) of the *Rome Statute* ("the Statute"), rules 87 (2) (c) and 88 (4) of the *Rules of Procedure and Evidence* ("the Rules") and regulation 8 (c) of the *Regulations of the Court* ("the Regulations");

CONSIDERING that the Chamber, in its Decision, decided that the proceedings in the case of *The Prosecutor v. Bosco Ntaganda* shall remain under seal because (i) Bosco Ntaganda remained at large despite criminal proceedings against him in the Democratic Republic of the Congo ("the DRC") and continued to fight as a top commander of the *Mouvement Révolutionnaire Congolais* ("the MRC") against the *Forces Armées de la République démocratique du Congo* ("the FARDC") in the Ituri district,⁸ and therefore (ii) public knowledge of the proceedings in this case might result in Bosco Ntaganda hiding, fleeing, and/or obstructing or endangering the investigations or the proceedings of the Court;⁹

CONSIDERING that, in the Prosecution Application and at the confidential *ex parte* hearing held on 23 April 2008, the Prosecution submitted that the circumstances that initially led to the sealing of the arrest warrant against Bosco Ntaganda have changed, specifically that:

- (i) Bosco Ntaganda is no longer fighting as a top commander of the MRC against FARDC in the Ituri district;¹⁰
- (ii) there are reasons to believe that Bosco Ntaganda may have become aware of the existence of the arrest warrant against him;¹¹

⁶ ICC-01/04-118-US-Exp and ICC-01/04-118-US-Exp-Corr

⁷ ICC-01/04-02/06-1-US-Exp-tEN

⁸ ICC-01/04-02/06-1-US, para 80

⁹ ICC-01/04-02/06-1-US, para 79

¹⁰ ICC-01/04-02/06-15-US-Exp, para 12 However, according to the Prosecution, he may have joined the Congrès National pour la défense du peuple ("CNDP") and may currently operate in the North Kivu

¹¹ ICC-01/04-02/06-15-US-Exp, paras 14-15, see also ICC-01/04-02/06-T-1-US-ENG, page 3, from line 1

- (iii) any potential risk that the unsealing of the Warrant of Arrest against Bosco Ntaganda could have for victims and witnesses is under control¹² as protective measures have been taken to ensure the adequate security of the witnesses in this case and in the cases of *The Prosecution v. Thomas Lubanga Dyilo* and *The Prosecution v. Germain Katanga and Mathieu Ngudjolo Chui*;¹³
- (iv) if the international actors are officially informed that there is an arrest warrant against Bosco Ntaganda, it may be more difficult for Bosco Ntaganda to flee or to seek refuge in the neighbouring countries;¹⁴ and
- (v) the arrest warrant has been notified to the DRC authorities for almost a year without the DRC authorities being in a position to execute it, and unsealing may assist the DRC authorities in apprehending him;¹⁵

CONSIDERING that, during the confidential *ex parte* hearing held on 23 April 2008, the representatives of the Registry, which is the competent organ of the Court to execute the Court's warrants of arrest and is in charge of the Court's Witness Protection Programme, agreed with the Prosecution that (i) the unsealing of the warrant of arrest for Bosco Ntaganda will not endanger the witnesses of the DRC cases;¹⁶ and that (ii) this was the "right moment" to make public the warrant of arrest for Bosco Ntaganda;¹⁷

CONSIDERING that, in light of the above-mentioned, it is the view of the Chamber that it is no longer necessary for the warrant of arrest against Bosco Ntaganda to remain under seal;

¹² ICC-01/04-02/06-T-1-US-ENG, page 7 from line 7

¹³ ICC-01/04-02/06-15-US-Exp, para 21 ICC-01/04-02/06-T-1-US-ENG, page 6, lines 10 to 14, and lines 19 and 20

¹⁴ ICC-01/04-02/06-T-1-US-ENG, page 13 from line 22

¹⁵ ICC-01/04-02/06-15-US-Exp, paras. 17-18

¹⁶ ICC-01/04-02/06-T-1-US-ENG, page 7, lines 20 to 23, and page 8, lines 22 to 25 and page 9, lines 2 to 5

¹⁷ ICC-01/04-02/06-T-1-US-ENG, page 18, lines 11 to 15

CONSIDERING that regulation 8(c) of the Regulations of the Court requires publication on the website of the Court of all “decisions and orders of the Court and other particulars of each case brought before the Court as described in rule 15;”

CONSIDERING that the Single Judge will decide on the Prosecution’s extended request for unsealing the decisions of 10 February 2006 and of 22 August 2006 in a separate decision;

FOR THESE REASONS

DECIDES to unseal and to reclassify as public the documents ICC-01/04-02/06-2-US and ICC-01/04-02/06-2-US-Anx;

ORDERS the Prosecution to file a public note of the Prosecution Application in the record of the case of *The Prosecutor v. Bosco Ntaganda*.

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



Judge Akua Kuenyehia
Presiding Judge



Judge Anita Ušacka



Judge Sylvia Steiner

Dated this Monday 28 April 2008

At The Hague, The Netherlands