

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-02/06
Date: 16 November 2009

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

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

Public Document

**Decision on the "Prosecution's Application to Lift the Seal on Proceedings before
the Pre-Trial Chamber"**

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

Ms Fatou Bensouda

Counsel for the Defence

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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**

Mr Xavier-Jean Keïta

States Representatives

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar

Ms Silvana Arbia & Mr Didier Daniel
Preira

Defence Support Section

Mr Esteban Peralta Losilla

Victims and Witnesses Unit

Detention Section

Mr Anders Backman

**Victims Participation and Reparations
Section**

Other

I, Judge Sylvia Steiner, Single Judge responsible for carrying out the functions of Pre-Trial Chamber I in relation to the proceedings of the situation in the Democratic Republic of the Congo and any related cases emanating therefrom, including the case of *The Prosecutor v. Bosco Ntaganda*, at the International Criminal Court;¹

NOTING the “Decision on the Prosecutor's Application for Warrants of Arrest, Article 58” issued by the Chamber on 10 February 2006 (the “10 February Decision”) whereby the Chamber, having found the case inadmissible, rejected the Prosecution’s request for the issuance of a warrant of arrest against Mr Bosco Ntaganda;²

NOTING the “Judgment on the Prosecutor’s appeal against the decision of Pre-Trial Chamber I entitled “Decision on the Prosecutor’s Application for Warrants of Arrest, Article 58” issued on 13 July 2006 whereby the Appeals Chamber reversed the 10 February Decision and remanded the Prosecutor’s Application for a warrant of arrest against Mr Bosco Ntaganda to the Chamber for competition of the review limited to the requirements stipulated in article 58(1) of the Statute;³

NOTING the “*Décision relative à la requête de l’Accusation aux fins de délivrance d’un mandat d’arrêt*” issued on 22 August 2006 whereby the Chamber on the basis of the evidence and information provided by the Prosecution decided to issue a warrant of arrest against Mr Bosco Ntaganda;⁴

¹ ICC-01/04-02/06-25.

² ICC-01/04-02/06-20-Anx2.

³ ICC-01/04-169.

⁴ ICC-01/04-02/06-1-US.

NOTING the warrant of arrest against Mr Bosco Ntaganda issued by the Chamber on 22 August 2006;⁵

NOTING the “Prosecution’s Application for Unsealing the Arrest Warrant against Mr Bosco Ntaganda” filed by the Prosecution on 29 February 2008;⁶

NOTING the confidential *ex parte* hearing held before the Chamber on 23 April 2008, in which the Prosecution extended its request⁷ for unsealing to the decisions of 10 February 2006⁸ and of 22 August 2006;⁹

NOTING the “Decision to unseal the warrant of arrest against Bosco Ntaganda” issued by the Chamber on 28 April 2008;¹⁰

NOTING the “Decision unsealing and reclassifying Pre-Trial Chamber I’s Decision of 10 February 2006” issued by the Single Judge on 17 July 2008;¹¹

NOTING the “Prosecution’s Application to Lift the Seal on Proceedings before the Pre-Trial Chamber” (“the Prosecution Application”) filed on 24 September 2008 whereby the Prosecution (i) requested to lift the seal on two decisions of the Chamber¹² and on the transcript of a hearing¹³ and (ii) proposed, in the three annexes to its Application, redactions in order to protect the identity of witnesses and

⁵ ICC-01/04-02/06-2-US.

⁶ ICC-01/04-02/06-15-US-Exp.

⁷ ICC-01/04-02/06-T-1-US-ENG, page 20, from line 11.

⁸ ICC-01/04-118-US-Exp and ICC-01/04-118-US-Exp-Corr.

⁹ ICC-01/04-02/06-1-US-Exp-tEN.

¹⁰ ICC-01/04-02/06-18.

¹¹ ICC-01/04-520.

¹² Decisions ICC-01/04-102-US-Exp and ICC-01/04-108-US-Exp.

¹³ Transcript ICC-01/04-T-8-US-Exp-EN.

safeguard the confidentiality of certain issues dealt with during the aforementioned hearing;¹⁴

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, in the Prosecution Application, the Prosecution submitted that "[i]n order to achieve meaningful public disclosure of the important and precedential issues that were litigated before the Pre-Trial Chamber and in the context of the appeals proceedings,"¹⁵ seals shall be lifted on the following documents:

- (i) the decision of the Chamber issued on 20 January 2006 inviting the Prosecution to furnish the Chamber with additional materials, decision ICC-01/04-102-US-Exp;
- (ii) the agenda provided by the Chamber on 31 January 2006 for a hearing convened on 2 February 2006, decision ICC-01/04-108-US-Exp; and
- (iii) the transcript of the hearing held before the Chamber on 2 February 2006 ("the 2 February 2006 Hearing"), transcript ICC-01/04-T-8-US-Exp-EN.

CONSIDERING that (i) the warrant of arrest against Mr Bosco Ntaganda has been unsealed and made public and that (ii) the Decision on the Prosecutor's Application for Warrants of Arrest of 10 February 2006 was unsealed and a public redacted version was filed;

¹⁴ ICC-01/04-02/06-22-US-Exp.

¹⁵ Prosecution Application, para.14.

CONSIDERING that, in light of the above-mentioned, it is the view of the Single Judge that it is no longer necessary for the two decisions and the transcript of hearing referred to in the Prosecution Application, to remain under seal;

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 however, that the protection of witnesses whose statements were cited in the two decisions and during the 2 February 2006 Hearing requires that any information concerning their identity be redacted at this stage from the public;

CONSIDERING further that the confidentiality of certain information requires additional redactions in the relevant documents before they become public, in order to protect the aforementioned witnesses, further or ongoing investigations and cooperation issues;

FOR THESE REASONS

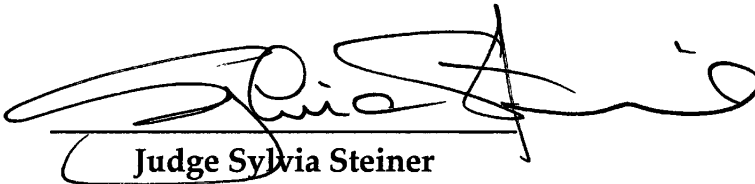
DECIDE to unseal and to reclassify as confidential and *ex parte* only available to the Prosecution the following documents:

- (i) ICC-01/04-102-US-Exp;
- (ii) ICC-01/04-108-US-Exp; and
- (iii) ICC-01/04-T-8-US-Exp-EN.

DECIDE to file a public redacted version of Decision ICC-01/04-102-US-Exp and a public redacted version of Decision ICC-01/04-108-US-Exp in which all confidential information and identifying information concerning witnesses is redacted.

INSTRUCT the Registrar to file a public redacted version of the transcript of the 2 February 2006 Hearing (ICC-01/04-T-8-US-Exp-EN) with the redactions proposed in Annex 3 of the Prosecution Application.

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



Judge Sylvia Steiner
Single Judge

Dated this Monday 16 November 2009

At The Hague, The Netherlands