

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

No.: ICC-01/04

Date: 20 January 2006

Original: English

PRE-TRIAL CHAMBER I

Before: Judge Claude Jorda, Presiding Judge
Judge Akua Kuenyehia
Judge Sylvia Steiner

Registrar: Mr Bruno Cathala

SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO

**Under seal
Ex Parte, Prosecution Only**

**Decision concerning Supporting Materials in Connection with the Prosecution's
Application for Warrants of Arrest pursuant to article 58**

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor

Mr Ekkehard Withopf, Senior Trial Lawyer

Ms Lyne Décarie, Trial Lawyer

No.: ICC-01/04

20 January 2006

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

NOTING the “Prosecution’s Application for Warrants of Arrest, Article 58” (“Prosecution’s Application”) filed by the Prosecution under seal and *ex parte* on 13 January 2006, requesting *inter alia* (i) that warrants of arrest be issued against Mr Thomas Lubanga Dyilo and Mr Bosco Ntaganda;¹ (ii) that the Prosecutor’s Application be received by the Pre-Trial Chamber under seal;² (iii) that the fact of the existence of the Prosecution’s Application also be under seal;³ and (iv) that any proceedings conducted in connection with the Prosecution’s Application be *ex parte* and in closed session;⁴

NOTING paragraphs 184, 185, 186, 187 and 188 of the Prosecution’s Application affirming (i) that Mr Thomas Lubanga Dyilo has been in provisional detention in the DRC since 19 March 2005 further to two warrants of arrest issued against him by the competent authorities of the DRC for the charges of genocide, crimes against humanity, murder, illegal detention and torture;⁵ (ii) that Mr Bosco Ntaganda, despite the warrant of arrest issued against him by the Prosecutor of the *Tribunal de Grande Instance* of Bunia (DRC) concerning the charges of membership of a joint criminal enterprise, arbitrary arrest, torture, and complicity in assassination, currently remains at large;⁶ and (iii) that “recent information provided to the OTP indicates that it cannot be excluded that Thomas Lubanga Dyilo will be released in

¹ Prosecution’s Application, para. 216.

² *Ibid.*, para. 7.

³ *Idem.*

⁴ *Idem.*

⁵ *Ibid.*, para. 184.

⁶ *Ibid.*, para. 185.

the near future, possibly within three or four weeks, that is, prior to the commencement of his trial before this Court”;⁷

NOTING article 58 (1) and (7) of the Statute;

CONSIDERING that, pursuant to article 58 (1) and (7) of the Statute, the issuance of a warrant of arrest or a summons to appear is subject to the Pre-Trial Chamber’s being satisfied that there are reasonable grounds to believe that the person has committed a crime falling within the jurisdiction of the Court;

CONSIDERING the absence of supporting materials relating to several factual allegations in the Prosecution’s Application;

CONSIDERING the difficulty of following some of the Prosecution’s factual allegations, including some in the section on “individual cases”, in light of the video transcript included in Annex VI of the Prosecution’s Application;

CONSIDERING that in paragraphs 184 and 185, footnotes 27 and 28, of the Prosecution’s Application, the Prosecution asserts that, should the Pre-Trial Chamber so wish, it can provide further information about the factual background of the DRC proceedings against Mr Thomas Lubanga Dyilo and Mr Bosco Ntaganda;⁸

CONSIDERING that the Prosecution assures to the Chamber that public knowledge of the Prosecution’s Application prior to any decision might (i) result in Mr. Thomas Lubanga Dyilo’s and/or Mr. Bosco Ntaganda’s hiding, fleeing, and/or obstructing or

⁷ Ibid, para. 187.

⁸ Prosecution’s Application, para. 184 and 185, footnotes 27 and 28.

endangering the investigations or the proceedings of the Court;⁹ and (ii) put the physical well-being of Mr Thomas Lubanga Dyilo at risk;¹⁰

FOR THESE REASONS,

DECIDES to grant the Prosecution's requests concerning:

- (i) receipt of the Prosecution's Application under seal by the Pre-Trial Chamber;
- (ii) maintaining the Prosecution's Application under seal; and
- (iii) conducting *ex parte* and closed session proceedings in connection with the Prosecution's Application.

INVITES the Prosecution, as soon as possible and at the latest by Wednesday 25 January 2006:

- (i) to provide further information and supporting materials concerning the ongoing proceedings in the DRC against Mr Thomas Lubanga Dyilo and Mr Bosco Ntaganda;
- (ii) to provide any information in the possession of the Prosecution which might indicate that Mr Thomas Lubanga Dyilo could be released in the near future, possibly within three or four weeks;
- (iii) to transmit to the Chamber a copy of the warrants of arrest issued in the DRC against Mr Thomas Lubanga Dyilo and Mr Bosco Ntaganda; and

⁹ Prosecution's Application, para. 8.

¹⁰ *Ibid.*

- (iv) to elaborate on the Prosecution's submission in paragraph 186 of the Prosecution's Application.

INVITES the Prosecution, as soon as possible and at the latest by Monday 30 January 2006:

- (i) to provide:
 - a. the full statements of [REDACTED];
 - b. supporting materials, such as birth certificates, ID cards, DRC registration forms, demobilisation registration forms or the like, in respect of their date of birth; and
 - c. information about their current whereabouts and security situation and any protective measures which the Prosecution may have taken under article 54(3)(f) of the Statute in order to ensure their security;
- (ii) to provide information on how and by whom the video included in Annex VI of the Prosecution's Application was recorded, how it came into the possession of the Prosecution, and the chain of custody since that time;
- (iii) to provide supporting materials for the alleged UPC/FPLC policy/practice of enlisting, recruiting and using children in military operations, specifying the camps and/or areas, and times concerning each camp and/or area where the Prosecution alleges such policy/practice was implemented by the UPC/FPLC between July 2002 and December 2003;

- (iv) to provide supporting materials for the following matters, specifying which supporting materials are related to each:
- a. the objectives of the UPC and the FPLC and their involvement in the armed conflict in Ituri between mid-2002 and the end of 2003;
 - b. the level of organization and organizational charts of the UPC and FPLC;
 - c. the relationship between the UPC and the FPLC;
 - d. armed groups, aside from the UPC/FPLC, involved in the conflict in Ituri between July 2002 and December 2003 and their level of organization (at least with regard to one of them);
 - e. the *de jure* and *de facto* authority of Mr Thomas Lubanga Dyilo within the UPC and the FPLC;
 - f. the *de jure* and *de facto* authority of Mr Bosco Ntaganda within the FPLC;
 - g. the hierarchical relationship between Mr Thomas Lubanga Dyilo and Bosco Ntaganda;
 - h. the Prosecution's factual statements in paragraphs 46, 73, 80, 82 and 94 of the Prosecution's Application;

DECIDES to convene a hearing with the Prosecution in relation to matters arising from the Prosecution's Application on Thursday 2 February 2006 at 10.00 a.m.

INFORMS the Prosecution that the agenda for the hearing on 2 February 2006 will be sent to the Prosecution as soon as practical once the above mentioned supporting materials have been received.

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

**/signed/
Judge Claude Jorda
Presiding Judge**

**/signed/
Judge Akua Kuenyehia**

**/signed/
Judge Sylvia Steiner**

Dated this Friday 20 January 2006

At The Hague

The Netherlands