

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

No.: ICC-01/04

Date: 31 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 the Hearing on 2 February 2006

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

31 January 2006

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

NOTING the “Decision Concerning Supporting Materials in Connection with the Prosecution’s Application for Warrants of Arrest pursuant to article 58” (the “Decision”), filed by Pre-Trial Chamber I (the “Chamber”) on 20 January 2006, whereby an *ex parte* hearing with the Prosecution in relation to matters arising from the Prosecution’s Application was convened on Thursday 2 February 2006 at 10.00 a.m.

NOTING the “Prosecution’s Submission of Further Information and Materials” (“the Prosecution’s Submission”), filed by the Prosecution 25 January 2006, whereby it is stated that “[t]he provision of materials in the context of the present submission has its legal basis in Article 19(1) of the Statute and the related offer of the Prosecution in footnotes 27 and 28 of the Application.”¹

NOTING the “Prosecution’s Submission of Further Information and Materials” (“the Prosecution’s Further Submission”), filed on 27 January 2006.

NOTING, articles 19, paragraph 1, and 58, paragraph 1 of the Statute, and rule 58, paragraph 2, of the Rules of Procedure and Evidence,

CONSIDERING that in the Decision the Chamber informed 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.”

¹ Prosecution’s Submission, paragraph 3, footnote 5.

DECIDES that the following matters shall be discussed in the *ex parte* hearing to be held with the Prosecution on 2 February 2006:

1. Whether the cases against Mr. Thomas Lubanga Dyilo and Mr. Bosco Ntaganda fall within the jurisdiction of the Court;
2. Whether those States which have jurisdiction over the cases against Mr. Thomas Lubanga Dyilo and Mr. Bosco Ntaganda have remained inactive or are unwilling or unable in relation to such cases;
 - a. Investigations and/or prosecutions by the DRC authorities of crimes allegedly committed by Mr. Thomas Lubanga Dyilo and Mr. Bosco Ntaganda that may appear *prima facie* to fall within the jurisdiction of the Court
 - b. Investigations and/or prosecutions undertaken by the DRC against Mr. Thomas Lubanga Dyilo and Mr. Bosco Ntaganda for the specific conduct contained in the Prosecution's Application;
 - c. Any investigations and/or prosecutions that Rwanda might have undertaken concerning Mr. Ntaganda, who in the Prosecution's Application is said to be of Rwandan origin;
 - d. Impact that in the Prosecution's view the issue of the arrest warrants may have in relation to the domestic investigations and/or prosecutions currently undertaken against Mr Thomas Lubanga Dyilo and Mr Bosco Ntaganda;

3. Prosecution's view on the content of the gravity threshold under article 17, paragraph 1(d), of the Statute in relation to a case arising from the investigation of a situation;
4. How Mr Lubanga currently under detention is in a position to obstruct or endanger the investigation or the court proceedings;
5. Whether the case against Mr. Thomas Lubanga Dyilo has any or all of the following features:
 - a. Systematic and large scale nature of the crimes contained in the Prosecution's Application.
 - b. Social alarm of the crimes contained in the Prosecution's Application
 - c. Seniority of Thomas Lubanga within the UPC and the FPLC
 - d. Role allegedly played by Mr Thomas Lubanga Dyilo in the alleged commission of crimes within the jurisdiction of the Court;
 - e. Role of the UPC/FPLC in relation to the crimes within the jurisdiction of the Court allegedly committed: (a) in the DRC Situation currently under investigation; and (b) in the alleged armed conflict in Ituri in the second half of 2002 and 2003;
6. Whether the case against Mr. Bosco Ntaganda has any or all of the features mentioned under 4, paying particular attention to the following issues:
 - i. Detailed description of the hierarchical organisation of the FPLC and of the position within such a hierarchy of Mr Bosco Ntaganda;
 - ii. Detailed description of the hierarchical organisation of the UPC, of the relationship between the UPC and FPLC and of

the position of Mr. Bosco Ntaganda within the broader movement UPC/FPLC;

- iii. Hierarchical relationship between Mr Bosco Ntaganda and Mr Thomas Lubanga Dyilo and between Bosco Ntaganda and other high ranking members of the UPC on the one hand, and of the FPLC on the other hand;
- iv. Role of Mr Bosco Ntaganda in the commission of the crimes alleged in the Prosecution's Application;

7. According to the Statements of the [REDACTED] witnesses-victims referred to in the specific cases in the Prosecution's Application, there was in the FPLC a Commander [REDACTED] and a Commander Bosco Ntaganda. The question arises as to whom the statements are referring when they simply refer to Commander BOSCO.

8. Scope of the ongoing investigation in the DRC situation, including in relation to crimes allegedly committed in Ituri in the second half of 2002 and in 2003 and the alleged involvement of the UPC/FPLC and the other armed groups cited in the Prosecution's Application;

9. International or non-international character of the armed conflict in Ituri in the second half of 2002 and 2003;

10. Playing the Video and identifying Mr. Bosco Ntaganda in the video;

11. Information on witness protection:

- a. Reasons why the Pre-Trial Chamber was not previously informed of [REDACTED];
- b. Information concerning the measures taken to protect the Victims and to prevent any risk to their safety.
- c. [REDACTED].

12. Prosecution's Request for authorisation to disclose the existence of an arrest warrant to certain entities:

- a. Clarification of the specific entities that are the object of this request;
- b. Reasons for this request considering the level of confidentiality currently involving the proceedings relating to the Prosecution's Application's for the issue of arrest warrants.

13. Request for authorisation for the Prosecution to make and transmit a request for arrest and surrender:

- a. Legal basis for such an authorisation;
- b. Specific problems in relation to the execution by the DRC authorities of a request for arrest and surrender that according to the Prosecution might be solved if the request is made on the basis of the cooperation agreement between the Prosecution and the DRC;
- c. Dangers that according to the Prosecution could be caused to victims and witness, [REDACTED], as a result of the transmittal of a request for arrest and surrender to the DRC authorities;
- d. Extent to which the Prosecution can facilitate to the Pre-Trial Chamber and the Registrar the information in its hands that in the Prosecution's view would facilitate the execution of a request for arrest and surrender, particularly in relation to Bosco Ntaganda.

14. Information on Mr Thomas Lubanga Dyilo's and Mr Bosco Ntaganda's assets and properties that could be the object of measures under article 57, paragraph (3)(e), of the Statute.

15. Other issues concerning the Prosecution's Application.

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 Tuesday 31 January 2006

At The Hague

The Netherlands