

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04 OA

Date: 23 April 2008

THE APPEALS CHAMBER

Before: Judge Navi Pillay, Presiding Judge
Judge Philippe Kirsch
Judge Georgios M. Pikis
Judge Sang-Hyun Song
Judge Erkki Kourula

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Under Seal
Ex parte, Prosecutor only

**Prosecution's Response to Directions of the Appeals Chamber regarding
Continued Classification of Appeal as Under Seal**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of 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

Detention Section

**Victims Participation and Reparations
Section**

Other

Procedural History

1. On 12 January 2006, the Prosecution filed the “Prosecutor’s Application for Warrants of Arrest, Article 58” before the Pre-Trial Chamber I for the issuance of an arrest warrant against Thomas LUBANGA DYILO and Bosco NTAGANDA.¹
2. On 10 February 2006, the Chamber issued the “Decision on the Prosecutor’s Application for Warrants of Arrest, Article 58” in which the Chamber decided to issue a warrant of arrest for Thomas LUBANGA DYILO and rejected the issuance of a warrant of arrest for Bosco NTAGANDA based on the inadmissibility of the case against him.²
3. On 14 February 2006, the Prosecution filed an appeal against the Decision, under Article 82(1)(a), to the extent that the Pre-Trial Chamber decided to declare the case against Bosco NTAGANDA inadmissible and consequently rejected the Prosecution’s request for the issuance of a warrant of arrest against him.³ The Prosecution filed its document in support of this appeal on 3 March 2006.⁴
4. The Application, the Decision and the documents relating to the Prosecution’s appeal had all been filed or issued under seal and ex parte.
5. On 29 March 2006, the Appeals Chamber ordered the Prosecution, pursuant to Regulation 28, to provide further details on, inter alia, the factual and legal basis for the filing of the appeal under seal and ex parte.⁵
6. The Prosecution filed supplementary submissions in response to the Appeals Chamber’s order on 5 April 2006, informing the Appeals Chamber that the

¹ ICC-01/04-98-US-Exp (“the Application” or “Prosecutor’s Application for Warrant of Arrest”).

² ICC-01/04-118-US-Exp-Corr (“the Decision”).

³ ICC-01/04-119-US-Exp.

⁴ ICC-01/04-120-US-Exp.

⁵ ICC-01/04-133-US-Exp.

appeal had been filed under seal and ex parte as this was the level of protection attached to the impugned Decision by the Pre-Trial Chamber.⁶

7. On 13 July 2006, the Appeals Chamber rendered its "Judgement 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'".⁷
8. As a result of the Appeals Chamber Judgment, on 22 August 2006 the Pre-Trial Chamber rendered its "Decision on the Prosecution Application for a Warrant of Arrest",⁸ issuing a warrant for arrest for Bosco NTAGANDA,⁹ which it decided shall remain under seal until otherwise provided for by the Chamber.
9. On 29 February 2008, the Prosecution requested that Pre-Trial Chamber I unseal the warrant of arrest against Bosco NTAGANDA.¹⁰
10. On 15 April 2008 Pre-Trial Chamber I scheduled a hearing, to take place on 23 April 2008, in order to obtain further information regarding the Prosecution's request for unsealing.¹¹
11. On 15 April 2008, the Appeals Chamber also directed the Prosecution to inform it of the reasons, if any (a) warranting the continued classification of the appeal lodged by the Prosecution against Pre-Trial Chamber I's Decision on the Prosecutor's Application for Warrant of Arrest, and (b) the resulting Judgment and Decisions issued by the Appeals Chamber.¹²
12. The Prosecution hereby responds to the Appeals Chamber's Order.

⁶ ICC-01/04-136-US-Exp.

⁷ ICC-01/04-169-US-Exp OA ("Appeals Chamber Judgment").

⁸ ICC-01/04-02/06-1-US-Exp.

⁹ ICC-01/04-02/06-2-US-Exp ("the warrant").

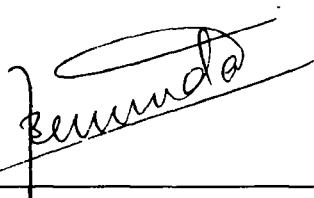
¹⁰ ICC-01/04-02/06-15-US-Exp.

¹¹ ICC-01/04-02/06-17-US.

¹² ICC-01/04-495-US-Exp ("Appeals Chamber's Order").

Submissions regarding possible unsealing of the Appeal

13. The under seal nature of the appeal was derivative of Pre-Trial Chamber I's decision to issue the arrest warrant under seal, pursuant to a specific application from the Prosecution. This protective measure, which was deemed to be properly founded by the Appeals Chamber,¹³ has not been varied by the Pre-Trial Chamber, and accordingly remains in force.
14. The Prosecution informs the Appeals Chamber that it has sought variation of that protective order before the Pre-Trial Chamber under Regulation 42(3), and that a hearing scheduled by that Chamber to discuss the application has been held today. The application was initially confined to the warrant of arrest. However, the Prosecution has extended that initial request to the relevant decisions of the Pre-Trial Chamber of 10 February 2006 and 22 August 2006 (which include the impugned Decision in this appeal).
15. The Prosecution is thus presently exploring with the Pre-Trial Chamber further and confined variations of the original protective measures, including issuing a re-formatted version of the impugned Decision. In that case, it is the Prosecution's view that the subsequent decisions and Judgment entered by the Appeals Chamber could be unsealed, subject to any order by the Pre-Trial Chamber.



Fatou Bensouda, Deputy Prosecutor
on behalf of
Luis Moreno-Ocampo, Prosecutor

Dated this 23rd day of April, 2008.
At The Hague, The Netherlands

¹³ see ICC-01/04-169-US-Exp, 13 July 2006, para. 23.