

Annex C
Confidential
Ex Parte Prosecutor and Defence

ICC-0204-PT-OTP (Uganda Situation)

04-T-3-CONF-EXP-EN [21 Jun 2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-E
21/6/2005 - 10:00 AM

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

1 International Criminal Court

2 Pre-Trial Chamber II

3 Situation ICC-02/04 Uganda

4 Procedural matters hearing - Ex parte exclusively destined to the Prosecutor

5 Tuesday, 21st June 2005 – Closed session

6 The hearing starts at 10.00 am.

7 The Presiding Judge: Madam Registrar, please call the matter for hearing.

8 The Registrar: The situation in Uganda, ICC-02/04.

9 The Presiding Judge: Thank you. Madam Prosecutor, you have become a
10 standing feature in these proceedings but, I suppose for the record, could you
11 kindly announce yourself and your learned colleagues?

12 Ms Chung: Yes, Mr President. I am Christine Chung, I am the Senior Trial
13 Attorney. With me is Fabricio Guariglia, who is the Senior Appeals Counsel.
14 Sitting at the extreme left of me is Anneliek Hendriks, who is an Assistant Trial
15 Attorney.

16 The Presiding Judge: Thank you very much. This is a formal
17 and closed hearing of Pre-trial Chamber II of
18 the International Criminal Court on matters concerning
19 the protection of victims and witnesses.

20 By its decision dated 17th June 2005, the Chamber
21 has found it necessary to hear the Prosecutor on these
22 important and rather serious matters; they are concerns
23 raised in the Prosecutor's application for warrants of
24 arrest, as that application has been amended; they have
25 been raised also in the Prosecutor's subsequent

1 application dated 13th June 2005.

2 This morning, the Chamber seeks clarification and
3 additional details with respect to the arrangements for
4 the protection of victims and witnesses. This hearing
5 is for that purpose, and confined to that purpose alone.

6 Madam Prosecutor, as we did for the hearing last
7 week, the procedure we propose is for the judges to pose
8 a range of specific questions to which we will invite
9 the Prosecution to respond. I will, as I did last week,
10 commence such questions and I will, in time, invite
11 their Honours to ask additional and supplemental
12 questions.

13 Questions by The Presiding Judge

14 Let me now turn to the questions. In
15 the application of 13th June 2005, the Prosecutor has
16 drawn attention to extremely damaging case-related
17 consequences, to increase danger for the population of
18 Northern Uganda, to increase danger for
19 victims/witnesses, those living in areas investigated by
20 the Office of the Prosecutor and those believed to have
21 provided information to the Office of the Prosecutor.
22 You have also, in the application of 13th June, as
23 you did in the hearing last week, drawn attention to
24 the security measures taken by the Office of
25 the Prosecutor in conjunction with the Victims and

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

1 Witnesses Unit, described in the application as
2 extensive security measures, being measures which are
3 ongoing and not yet completed.

4 The Chamber would appreciate knowing and seeking
5 your clarification as to the following, in particular:

6 (1) the overall plan by the Office of the Prosecutor
7 regarding these security measures;

8 (2) what specific measures are already in place;

9 and, if they differ in type and scope, what is being
10 done with respect to victims, what is being done with
11 respect to witnesses, and perhaps what is being done
12 with respect to the general civilian communities, as
13 those of the former Barlonyo Camp for instance;

14 (3) if specific measures are not yet completed, as
15 the Prosecution has stated, what exactly are
16 the outstanding measures, if you are able to inform
17 the Chamber;

18 (4) in all these, what might be the timeframe that
19 the Prosecution has in mind or plans to put in place for
20 all these security measures.

21 It sounds lengthy, but I think you realise it is
22 a central question and rather interrelated. May
23 I invite you now to address the Chamber? Thank you.

24 Ms Chung: Mr President, I hope that the Court will lend me
25 some leeway to discuss this answer at length. This is

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

1 a topic area which has been of almost constant concern
2 to the Office of the Prosecutor and the subject of
3 constant interaction between the Office of
4 the Prosecutor and the Victims and Witnesses Unit, in
5 the ten months since we have been operating in Uganda.
6 There is some background that I am happy to share with
7 the Court, so that the Court's understanding of
8 the underlying problem will hopefully be enhanced.
9 The aim in these last ten months -- our first
10 missions were last August. One of the most difficult
11 aspects of operating in Northern Uganda has been
12 carefully calibrating disclosures and our profile so
13 that we do not endanger the safety of victims and
14 witnesses. At the very beginning, we were advised by
15 many groups in Northern Uganda how important it was for
16 us to remain at a low profile, and not to let
17 the disclosures come out in such a way that there would
18 be hostility towards the ICC intervention and also the
19 possibility of increased hostility towards anyone
20 cooperating with the ICC investigation.
21 For this reason, probably thousands of decisions
22 have been made in the last ten months, including things
23 as minute as [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

9 So everything that we do, everything that we have
10 done in the past ten months has been really aimed at
11 keeping the disclosures and the profile at
12 an appropriate level to safeguard witness safety.
13 I could probably for hours describe examples of the ways
14 in which we have done that.
15 This is one of the reasons that we were concerned by
16 the leak that occurred in the media last week. Because
17 in this carefully calibrated exercise, which really is
18 like building a house out of matchsticks, it is so
19 difficult to have an incident that increases our profile
20 and makes it seem as though the case is really further
21 along than it is. Because it is not the case that
22 we have warrants of arrest, and there was an implication
23 in the Le Monde article that we did. There was a little
24 confusion in the article about who issues the warrants
25 of arrest, but clearly the implication was there. And

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

1 very damaging for us was that it was reprinted in
2 Northern Uganda in that fashion, as if the case has now
3 gone to the next stage. So not only to have the profile
4 increased but to have it increased falsely creates
5 exactly that situation that we were trying to avoid,
6 which is to have the disclosures and the profile running
7 ahead of the witness protection measures.
8 We always knew that the phases would be preparedness
9 for the warrant application and a desire to get that
10 warrant application to this Chamber as quickly as
11 possible, for the reasons that I discussed last
12 Thursday, namely the possibility that one or another of
13 our targets might be captured. In that situation, for
14 us not to be prepared to proceed, from our side,
15 we believe that would have been disastrous. We also
16 knew that we would not be quite ready with all the
17 witness protection measures that would have to be in
18 place for the warrants issued by the Court, if warrants
19 are issued by this Court, to become public.
20 So we always saw this as a phased exercise.
21 The fact that this disclosure came in the middle of
22 those two phases does create in our minds exactly
23 the dangers and risks that we spoke of in our
24 application. These are exactly -- in drafting that
25 application, those concerns are the same concerns that

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

1 have been with us for the past ten months.

2 So when we look forward in this exercise, what I can

3 describe for the Court are exactly the questions that

4 you raised, Mr President, in terms of the security

5 measures.

6 The overall plan I have already been addressing

7 somewhat. This was the overall plan. In this short

8 period, when we are getting ready to disclose

9 the existence of any warrants issued by this Court, our

10 aim is essentially to undertake three tasks. One is

11 support for execution of the warrants. I will not

12 discuss that today; I discussed that last Thursday. It

13 is, though, important to remember that piece, because

14 the piece of support for execution of the warrants and

15 the second piece of arranging the witness security are

16 really two steps that should be completed in tandem.

17 That is what the Office of the Prosecutor is trying to

18 do in these next few weeks.

19 Specifically on the topic of witness protection,

20 though, victim and witness protection, I can describe

21 the steps that we are taking and we have taken in order

22 to ensure victim and witness protection thus far.

23 First of all, in terms of measures that are already

24 in place, and I will discuss it -- I guess what I will

25 do is give a first answer, the answer that I believe is

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

1 appropriate, and obviously if there are follow-up
2 questions, I will endeavour to answer those.
3 Together with the Victims and Witnesses Unit, we
4 established a protocol, after doing some initial
5 missions in Uganda. What was decided was that there are
6 essentially two parts to this. There are assessments of
7 the individuals' situations. So with respect to
8 witnesses -- let me take witnesses first because that is
9 a more cabined group.
10 There are individualised assessments performed for
11 every witness to assess the risk that would be brought
12 on by interviewing this person. Then there is also
13 a response mechanism in place, [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED] so if there is any difficulty that the witness
18 encounters, if they are threatened by somebody or they
19 believe that they are in danger for some reason,
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED] there
24 is arrangement also for this person to get to a safe
25 place, either by himself or herself or with his or her

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

1 family.

2 So let me discuss those two areas. In terms of

3 the individualised assessments, with VWU [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] So all of that

24 information is taken and put into an assessment of how

25 risky it may be to try to meet with this person.

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

1 Contacts with the person, initial contacts with
2 the person, again are made in accordance with
3 the protocol that was developed by VWU. [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED] But there are probably
19 hundreds of witnesses that we will not interview [REDACTED]
20 [REDACTED] because we do not believe it is safe
21 enough even to approach them.
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

1 [REDACTED]

2 [REDACTED]

3 [REDACTED] We have made judgments, keeping it to

4 a very, very limited pool of those we judge to be

5 the most safe under the protocols that we have

6 established with the VWU.

7 Once we have done this weeding process and

8 determined which people are the safest and still have

9 good information -- sometimes we forego what is the

10 prospect of great information for the sake of safety --

11 then we make initial contacts, again in accordance with

12 the protocol developed with VWU, in whatever manner we

13 deem to be the most safe. [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 When the person initially meets with us, we sit down

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

1 and do a security assessment [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] if there is any concern about safety, we
12 address that concern before we move on to the next
13 stage.
14 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] So those are the measures that
24 are in place now.
25 One thing that I should add, of which your Honour is

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

1 already aware: from the beginning of the investigation,
2 our policy has been to minimise the number of victim
3 witnesses, because we knew it would be very, very
4 difficult to meet victim witnesses without exposing them
5 to risk. In this investigation, the need for that
6 testimony -- there is always a need for victim witness
7 testimony, but we were able to make many of the links to
8 the targets and to flash out the events in the attacks
9 without resorting to victim witnesses. In terms of
10 percentage of the overall witnesses, the victim
11 witnesses are not at this stage a very high percentage,
12 and we intend to keep that way, if we can, because we
13 are lucky enough to have other forms of evidence that
14 help us to fill in the accounts without them.
15 In terms of where we are now, what I can represent
16 to the Court is that we are proud of our record, we have
17 been there now for ten months and not had any incident
18 which could even remotely be attributed back to the ICC
19 intervention. We have spoken now, sometimes in
20 follow-up interviews, with the witnesses; we continue to
21 ask them whether or not they have any security concerns;
22 [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED] So there is routine follow-up, and

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

1 so far there is no incident that we can attribute back
2 to our investigation.
3 So in terms of how it has gone thus far, we are
4 obviously somewhat lucky, but we feel that much of
5 the work that has gone into the planning and much of
6 the diligence that we put into the planning with VWU at
7 the beginning of the process has really paid dividends,
8 and we are seeing the fruits of that labour now.
9 Our plans for moving forward are as follows. As
10 I began to explain to the Chamber last week, once
11 the places that are at issue in the charges become
12 known, we do have a concern that those places will be
13 vulnerable. And this implicates both victims and
14 witnesses, because clearly anybody who lives in any of
15 those areas are victims of the very attacks that the OTP
16 is now investigating.

● [REDACTED]
● [REDACTED]
● [REDACTED]
● [REDACTED]
● [REDACTED]
● [REDACTED]
● [REDACTED]
● [REDACTED]
● [REDACTED]
● [REDACTED]

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

10 One of our plans for this three- or four-week period

11 that I was identifying for the Court last week is to

12 complete this round of interviewing, in essence to do

13 a full security assessment again, an interim security

14 assessment, based on re-interviewing solely on the topic

15 of security. So right now we have [REDACTED] teams in Uganda

16 who are re-interviewing [REDACTED]

● [REDACTED]

● [REDACTED] They will

19 be talking to the UPDF about the capability and

20 feasibility of protecting victims and witnesses in

21 an enhanced manner, and we will be speaking again to

22 our police contact and to some local militia contacts.

23 So this again is not an easy process, but we

24 anticipate [REDACTED]

● [REDACTED]

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

1 obtaining the information to enable us to complete this
2 interim security risk assessment. The plan for putting
3 together the security assessment has been formulated
4 together with VWU.
5 As I mentioned last week, VWU members have been
6 invited to go on these missions as well, and I think
7 that they will make, at least some of them -- I was not
8 here in the past couple of days, so I do not know what
9 precise arrangements were made by VWU, but they are well
10 aware of the planned missions and of the invitation for
11 them to attend any or all of these.
12 The need for an up-to-date assessment is critical.
13 On a day-to-day basis we have information about new
14 attacks, where they are and what kinds of attacks
15 they are. Is the LRA now attacking camps looking for
16 food? Is their main priority weapons? How big are
17 the groups that are attacking the different places and
18 where are they operating? This is one set of
19 information. We will then have the inputs and
20 the opinions of the people whom we are obliged to
21 protect, and then we will have the information from
22 those who can possibly provide protection.
23 When we have all those pieces of information
24 together, then we will be in a position to come to some
25 judgment on our own about where we are in terms of

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

1 implementing the final security measures, in preparation
2 for disclosure of the warrants, obviously together with
3 VWU. An important component of that is, as I mentioned
4 last week, coming back to the Chamber and reporting to
5 the Chamber. Because, obviously, what we will be doing
6 is making a request to the Chamber, possibly at that
7 point, to disclose the existence of any warrants that
8 exist at that time.

9 So this was the overall plan and these are the steps
10 that are being taken now. We knew that there would be
11 this interim phase, and we have always hoped that it
12 could go quickly, but obviously there are some factors
13 that are beyond our control.

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 In terms of the leak -- and I only mention this
24 because I know that our application is somewhat of
25 an impetus for this hearing today -- I want to reassure

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

1 the Court that thus far in these missions we have not
2 found anything that we could attribute back to the leak.
3 Despite our concerns about increased risk and danger,
4 there is no threat or concrete occurrence out in
5 the field that we have come across to attribute back to
6 the leak.
7 I think the bad consequence of the leak is that now,
8 in our contacts with the local leaders and the donor
9 countries, as I mentioned last week, the international
10 community, there seems to be more of a feeling,
11 an assumption that there have been warrants issued by
12 this Court, which of course is a serious matter. There
13 have not been. The fact that the community, and even
14 the local community, now is getting somewhat cynical
15 about what the ICC is saying versus what it is doing is
16 a real concern. The integrity of the Court is very much
17 at issue here.
18 The idea is that, through publication in the media
19 of the news that there are warrants of arrest, now
20 the community is thinking: maybe the ICC is doing one
21 thing and saying another. That is a matter of grave
22 concern to us, and it makes -- especially for a new
23 institution, I think it could create a situation where,
24 in Uganda, where there is already plenty of criticism of
25 the ICC intervention and plenty of anticipation of how

-
- | Row | Value (approximate percentage of max length) |
|-----|--|
| 1 | 95 |
| 2 | 98 |
| 3 | 98 |
| 4 | 75 |
| 5 | 95 |
| 6 | 100 |
| 7 | 98 |
| 8 | 95 |
| 9 | 98 |
| 10 | 95 |
| 11 | 85 |
| 12 | 45 |
| 13 | 90 |
| 14 | 95 |
| 15 | 100 |
| 16 | 100 |
| 17 | 95 |
| 18 | 95 |
| 19 | 95 |
| 20 | 85 |
| 21 | 90 |
| 22 | 100 |
| 23 | 85 |
| 24 | 95 |
| 25 | 95 |

2 I think that completes what I would say as a first
3 presentation, unless there are any questions from
4 the judges. I am sorry to have gone on for so long.
5 The Presiding Judge: No, no, thank you very much. In
6 line with that first question, we know of at least five
7 camps and one school from the application, but it
8 does seem to be a particularly weighty burden on the OTP
9 and the Victims and Witnesses Unit of the Court to have
10 the safety and security of witnesses in these locations.
11 I just wanted to ask: are there other security
12 measures that are being employed at the same time,
13 perhaps by the United Nations, by the Red Cross,
14 High Commissioner for Refugees, that are parallel and
15 supportive of the ICC's own efforts through the OTP and
16 the Victims and Witnesses Unit, please?

17 Ms Chung: Mr President, the main security that is provided
18 in these camps is provided by the UPDF. We have
19 received cooperation [REDACTED]

██████████ of the type that I am about to specify.

21 They have very good security information.

(b) (5) DPP, (b) (5) ACP

(b) [REDACTED]

● [REDACTED]

(b) [REDACTED]

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

● [REDACTED]
● [REDACTED]
● [REDACTED]
● [REDACTED]
● [REDACTED]

6 They also help us to maintain a database of where
7 the LRA activity is at any given moment. But in terms
8 of actually providing personnel or measures, there is
9 nothing there that we think covers our needs.
10 I did forget to mention one thing with respect to
11 our planning on a going-forward basis, although I did
12 raise it with the Chamber last week; it is part of
13 the interim risk assessment that we are doing. We will
14 be assessing whether or not any of the witnesses need to
15 be moved. [REDACTED]

● [REDACTED]
● [REDACTED]
● [REDACTED]
● [REDACTED]
● [REDACTED]
● [REDACTED]
● [REDACTED]
● [REDACTED]
● [REDACTED]
● [REDACTED] So again we will

24 talk to each one individually, and we will have a better
25 idea when the missions are completed, if relocations

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

1 are necessary, how onerous those relocations will be.
2 The Presiding Judge: Thank you. Now, the second and last
3 question I want to ask relates to the proposed redacted
4 version of the Prosecutor's application.
5 Amongst the papers annexed is an Exhibit B, which is
6 a list of witnesses and victims whose names have been
7 expunged from the application, for security and
8 protection reasons. I may be wrong, but it does not
9 appear very clear what the OTP intends to do with this
10 list or what the intention is.
11 At the time of transmission of the records, is this
12 list to go forward as part of the documentation to be
13 submitted to Uganda and the authorities of Uganda, for
14 instance? Could you just clarify that, the list of
15 witnesses and victims, please?
16 Ms Chung: Mr President, that list was, in the first
17 instance, mainly for the Chamber's use. This whole idea
18 of the redacted version of the application has become
19 somewhat less critical. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13 Obviously if the warrant application did become public,
14 we would want that to happen only in this redacted form.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

1 [REDACTED]
2 However, the next event would be, if there is
3 anybody arrested, the usual practice would be that at
4 that point, yes, the application would become public, at
5 least to the defendant, maybe even to the world. In
6 that situation, we would still like the names of
7 the witnesses and the victims to be redacted.

8 So there is still a point in time, maybe later down
9 the road, later in the chronology, when this redacted
10 version will become relevant. But it was our idea that,
11 even when that became public, the answer key or
12 the lists would remain with the Court.

13 The Presiding Judge: Thank you for that clarification. May
14 I now invite his Honour Judge Politi to ask you further
15 questions. Judge Politi, please.

16 Questions by Judge Politi

17 Judge Politi: Thank you, Mr President.

18 Madam Prosecutor, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

8 Ms Chung: [REDACTED]

Row	Bar Length (approx. % of total width)
1	95
2	85
3	98
4	45
5	92
6	93
7	100
8	94
9	100
10	96
11	70
12	91
13	88
14	98
15	97
16	95
17	92
18	96
19	94
20	90

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

1 Unit and, more generally, with the Registry. I must say
2 that you have touched upon some of these aspects in your
3 previous intervention. You discussed the protocol, as
4 you have elaborated, with the Victims and Witnesses
5 Unit, and you are following in your actions aimed at
6 protecting victims and witnesses, and you have discussed
7 also the cooperation in the framework of the ongoing
8 security assessment. Now, are there any other aspects
9 that you would like to highlight, on the cooperation of
10 the Victims and Witnesses Unit and, more generally, with
11 the Registry?

12 During the hearing of 16th June before this
13 Pre-trial Chamber, the OTP mentioned the fact that
14 you were about to set up and assess, together with
15 the Registry [REDACTED]

[REDACTED]
[REDACTED] Maybe, as I said, you already partially
18 discussed this, but if you could elaborate on it, we
19 would greatly appreciate that.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

25 So can you explain to the Court these other aspects,

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

1 if any, of the cooperation that you would like to
2 highlight, or any concern that you have about this
3 cooperation? Thanks.

4 Ms Chung: I have highlighted to the Chamber in the past
5 really what I view to be the excellent cooperation
6 between the Registry, the VWU and OTP in this situation,
7 which is not to denigrate the cooperation in the other
8 situations.

9 In Uganda, the challenges of operating and of
10 protecting witnesses and victims have been great, but
11 not insurmountable, nor close to insurmountable. So,
12 unlike in the Congo, where sometimes we cannot go there,
13 in Uganda, usually we can go, but the challenge is to
14 plan properly and put in place proper measures so we can
15 operate safely and not create risks for victims and
16 witnesses.

17 I think that, as I have described, the cooperation
18 at all points between the VWU and OTP has been really
19 excellent. Certainly at the beginning, almost all of
20 the missions were joint missions, we were there with
21 the Registry and security personnel from the Court,

22 [REDACTED]

23 [REDACTED] So really at every juncture when we have
24 looked around and decided what to do next, the VWU has
25 been a part of that, and we have only gone forward when

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

1 we have had an agreed-upon plan. That is not to say
2 that there are not times when there are slight
3 disagreements, but we have always been able to work it
4 out. I think that our record thus far shows that we
5 have done it in a way that we have managed to protect
6 the victims and witnesses. Which is not to say that it
7 is all in our control, but so far it has worked out very
8 well.

9 At this stage, in terms of the interim risk
10 assessment, the parameters of that assessment have been
11 discussed with and formulated in consultation with
12 the VWU. As with all the prior steps, we fully expect
13 to sit down once we have all the information and discuss
14 with them what measures still need to be implemented.

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 Certainly in terms of the assessment and where
25 we are going next, I expect VWU to be fully involved.

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

20 Judge Politi: Thank you. I have one last set of questions.

21 Following the meeting with this Chamber of last

22 February 8th, the Prosecutor provided the judges with

23 copies of the agreement on the provision of protective

24 measures and security arrangements for witnesses,

25 entered into with the Government of Uganda on

[illegible]

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

-
- | Row | Bar Length (approx. % of total width) |
|-----|---------------------------------------|
| 1 | 95 |
| 2 | 75 |
| 3 | 90 |
| 4 | 95 |
| 5 | 70 |
| 6 | 100 |
| 7 | 90 |
| 8 | 85 |
| 9 | 15 |
| 10 | 95 |
| 11 | 90 |
| 12 | 100 |
| 13 | 95 |
| 14 | 75 |
| 15 | 90 |
| 16 | 85 |
| 17 | 90 |
| 18 | 100 |
| 19 | 90 |
| 20 | 80 |
| 21 | 20 |
| 22 | 95 |
| 23 | 90 |
| 24 | 90 |
| 25 | 95 |

-
- | Row | Bar Length (approx. % of max) |
|-----|-------------------------------|
| 1 | 95 |
| 2 | 10 |
| 3 | 85 |
| 4 | 80 |
| 5 | 98 |
| 6 | 88 |
| 7 | 98 |
| 8 | 90 |
| 9 | 95 |
| 10 | 98 |
| 11 | 100 |
| 12 | 100 |
| 13 | 85 |
| 14 | 92 |
| 15 | 98 |
| 16 | 95 |
| 17 | 65 |
| 18 | 88 |
| 19 | 95 |
| 20 | 90 |
| 21 | 90 |
| 22 | 88 |
| 23 | 90 |
| 24 | 98 |
| 25 | 85 |
| 26 | 100 |

Row	Bar Length (approx. %)
1	95
2	90
3	88
4	92
5	85
6	93
7	90
8	88
9	85
10	82
11	85
12	85
13	95
14	90
15	85
16	82
17	92
18	93
19	95
20	98
21	100
22	10
23	90
24	95
25	80
26	98
27	88

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

5 Judge Politi: [REDACTED]

● [REDACTED]

7 Mr President.

8 The Presiding Judge: Thank you very much, Judge Politi.

9 That raises a question, the Registrar reminded me,

10 of whether the agreement should be placed in the record.

11 It is a bit of a formality, but I think it is just as

12 well to complete the record if we could. Would you be

13 able to supply a copy for that purpose?

14 Ms Chung: Certainly, Mr President.

15 The Presiding Judge: May I now invite her honour

16 Judge Diarra to put additional questions?

17 Questions by Judge Diarra

18 Judge Diarra (interpretation): Thank you, Mr President.

19 Madam Prosecutor, many of the my concerns have been

20 answered in fact by you in the various explanations and

21 details which you have given, following on from

22 the questions put by my colleagues. Nonetheless,

23 I would like to put a question to you.

● [REDACTED]

● [REDACTED]

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

6 Ms Chung: [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

-
- | Row | Bar Length (approx. %) |
|-----|------------------------|
| 1 | 95 |
| 2 | 85 |
| 3 | 40 |
| 4 | 75 |
| 5 | 90 |
| 6 | 95 |
| 7 | 98 |
| 8 | 90 |
| 9 | 92 |
| 10 | 98 |
| 11 | 80 |
| 12 | 75 |
| 13 | 78 |
| 14 | 95 |
| 15 | 92 |
| 16 | 95 |
| 17 | 95 |
| 18 | 95 |
| 19 | 92 |
| 20 | 10 |
| 21 | 85 |
| 22 | 100 |
| 23 | 95 |
| 24 | 98 |
| 25 | 90 |

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

● [REDACTED]

● [REDACTED]

● ●

● [REDACTED]

(b) (5) DPP, (b) (5) ACP

Journal Pre-proof

(b) (7)(C), (b) (7)(D)

(b) (5) DPP, (b) (5) ACP

(b) [REDACTED]

(b) (5) DPP, (b) (5) ACP

(b) (5) DPP, (b) (5) ACP

23 Judge Diarra (interpretation): [REDACTED]

(b) (5) DPP, (b) (5) ACP

-
- | Row | Bar Length (approx. %) |
|-----|------------------------|
| 1 | 85 |
| 2 | 65 |
| 3 | 80 |
| 4 | 70 |
| 5 | 78 |
| 6 | 90 |
| 7 | 92 |
| 8 | 88 |
| 9 | 85 |
| 10 | 90 |
| 11 | 45 |
| 12 | 100 |
| 13 | 80 |
| 14 | 88 |
| 15 | 92 |
| 16 | 95 |
| 17 | 90 |
| 18 | 75 |
| 19 | 70 |
| 20 | 82 |
| 21 | 85 |
| 22 | 88 |
| 23 | 90 |
| 24 | 82 |
| 25 | 85 |

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

● [REDACTED]
● [REDACTED]
● [REDACTED]
● [REDACTED]
● [REDACTED]
● [REDACTED]

7 Judge Diarra (interpretation): One last question, Madam Prosecutor. Can we
8 consider today that the privacy and the safety of
9 victims and witnesses is ensured, in other words that
10 the necessary measures have been taken in the wake of
11 the revelations in the press? Do you consider that
12 the risks that these people incurred are covered?

13 Ms Chung: The answer to that, your Honour, is based on
14 the information so far. We do not think that a leak has
15 resulted in any incident in the field. However, we will
16 keep asking. It is somewhat fortunate that we planned
17 these missions and they occurred after the leak.

18 We will keep asking and probing to see if there is any
19 connection.

20 At the time that we submitted our application -- and
21 we continue to have some very, very deep concerns about
22 the leak and also the idea that it may be part of a --
23 more than one incident. That was the reason that we had
24 made the application for there to be some kind of
25 inquiry.

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

1 We have to say that, in looking at the Court Rules
2 and the Staff Rules and the Auditors' Charter, the Court
3 does not seem to be well equipped to handle a court-wide
4 inquiry. It is almost as if the rules, the Staff Rules,
5 the Court Regulations, assume that there is
6 an infraction that is easily attributable to somebody.
7 There are a lot of measures about disciplinary
8 action against staff members who violate the rules, but
9 almost nothing about how to investigate, if you believe
10 that something like that has occurred but you do not
11 know who might have committed the infraction.
12 So we might be as puzzled as the Chamber on how best
13 to proceed, and we understand that the Chamber has only
14 deferred the question. We do continue to believe that
15 for many reasons, including the culture of the Court and
16 the integrity of the Court and the risk that is created
17 in the field, it is a serious incident which should be
18 inquired into. We understand that certainly
19 the Prosecutor took some initiative in sending the email
20 that he did, but our concern is that it may be viewed as
21 simply an OTP action.
22 The lack of response by the Court to this incident,
23 even if it is a delayed response -- we may know it is
24 a delayed response, or at least that there may be the
25 implementation of some measure later, but in the interim

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

1 the idea that something like this could happen and maybe
2 not be addressed publicly in a more forceful way does
3 raise some concerns with us.
4 I just wanted to say that as an explanation for why
5 we put in the application and felt it was important to
6 do so quickly. In case there is a risk of
7 misunderstanding, it was not our notion that
8 the connection to this Pre-trial Chamber should ever be
9 revealed, or that the application or even the content of
10 the warrant ever be revealed to the internal auditor.
11 In fact the leak could be investigated as an infraction
12 of the Staff Rules without making any connection back to
13 these proceedings. It would be important for
14 the auditor to know the chronology of the warrant
15 application so that he had the background, but he need
16 not disclose that to anybody, necessarily, he could
17 carry on his own investigation.
18 We have to say, looking at the rules, he does seem
19 to be the best situated person, because the whole reason
20 he was hired was to do court-wide compliance with
21 internal controls. But we understand your Honours have
22 deferred the question and I do not want to press
23 the point, but I wanted at least to have the opportunity
24 to explain why we made the application we did. We do
25 have our worries about the situation and the repeated

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

1 nature of it, or the seemingly repeated nature of it.
2 Judge Diarra (interpretation): Madam Prosecutor, this concern which you have
3 regarding this point in the procedure, has it pushed to
4 one side in your mind my question, which was whether
5 the necessary measures have been taken today to deal
6 with the risks which certain individuals now are
7 incurring? Have you taken measures to protect their
8 safety and privacy? That in fact was my question, but
9 you spent about 90 per cent of your time dealing with
10 your own procedural concerns.
11 Ms Chung: I am sorry about that. I would like to address
12 that question, obviously it is an important question.
13 We do feel that we have put in place the necessary
14 measures. It is a constant process of reassessment,
15 however, so we never want to fail to be vigilant on
16 that. That is part of the reason that we are devoting
17 the next set of missions -- after many missions in which
18 we half and half did security and then investigation,
19 now we are doing a hundred per cent security, and
20 I think it is important at this moment to do that.
21 So we have a certain amount of pride about what
22 we have accomplished and about the fact that so far
23 nobody seems that have been endangered in any
24 significant way by our investigation, but we also remain
25 cautious. I think that in the next few weeks we will

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

1 learn much more about how well it is going in the field,
2 if it is going in the field.

3 The Presiding Judge: Forgive me, just to follow that
4 through. Do I understand that, while you are monitoring
5 the situation now, since 11th or 13th June, nothing
6 specific additionally has been put in place? Do we
7 understand that correctly?

8 Ms Chung: Yes, Mr President. I think all the risks that
9 we are dealing with were pre-existing. For us it is
10 against the backdrop of a long course of witness
11 security measures, and we think that it was
12 an unfortunate occurrence. But the good part of it is
13 that, other than the cynicism about what the Court is
14 saying and doing, we do not think that there has been
15 any implication for witness security in terms of any
16 concrete occurrence in the field.

17 The Presiding Judge: Thank you. Just perhaps a final
18 question. The statute seems to assign to the Victims
19 and Witnesses Unit a prime responsibility, if not
20 an initiating responsibility, to provide for protective
21 measures and some sort of security protection.
22 From your cooperation, one would assume that what
23 they are doing is fully known to you, but just for
24 the sake of completeness. To your knowledge is
25 the Victims and Witnesses Unit undertaking any other

T-3-CONF-EXP-EN [21Jun2005 Corrected] 114-161 SZ PT(exT-02-04-3-Conf-Exp-EN-Corr) 21/6/2005

1 arrangements different from what you have described to
2 the Chamber?
3 Ms Chung: Mr President, I am not aware of any.
4 The Presiding Judge: Thank you. Your Honours, if there is
5 nothing else, let me, on behalf of the Chamber,
6 thank you for representing the Prosecutor. That
7 concludes our hearing this morning. Thank you very
8 much. The hearing is adjourned, Madam Registrar.
9 The hearing is adjourned at 11.20 am.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

T-02/04-3-Conf-Exp-EN Ex parte exclusively destined to the Prosecutor
Procedural matters hearing