

ANNEX 2

**Cour
Pénale
Internationale**



Le Greffe

**International
Criminal
Court**

The Registry

Reference: NV/DCS/2011/324MD/bbs
2011/000080869

Date: 19 October 2011

The Registrar of the International Criminal Court presents his compliments to the Director of the Protocol Department of the Ministry of Foreign Affairs of the Kingdom of The Netherlands, and wishes to hereby clarify certain matters following the confirmation from the Dutch Immigration authorities (Immigratie en Naturalisatiedienst, Afdeling Speciale Zaken) on 18 October 2011 that the interviews relating to the asylum applications of the four witnesses currently detained at the ICC-Detention Centre have been cancelled until further notice.

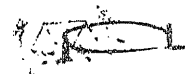
On the specific matter of the detained witnesses, the Registrar hereby confirms the position that the four detained witnesses, one attached to the case *The Prosecutor vs. Thomas Lubanga Dyilo* (ICC-01/04-01/06), and the remaining three attached to the case *The Prosecutor vs. Germain Katanga and Mathieu Ngudjolo Chui* (ICC-01/04-01/07), are currently detained under the exclusive authority of the Democratic Republic of the Congo ("DRC") following the requests of both Trial Chamber I and Trial Chamber II, respectively, to facilitate their *viva voce* testimonies at the seat of the Court, pursuant to Article 93(7) of the Rome Statute. These persons are currently detained under the custody of the Court, pursuant to Rule 192(2) of the Rules of Procedure and Evidence of the Court and to an agreement between the Congolese authorities and the Court.

To date, and in view of the requests for asylum by the four detained witnesses, both Trial Chambers have requested the Registry to consult with the relevant authorities of the Kingdom of the Netherlands regarding practical matters related to their detention. For instance in the case before Trial Chamber II, the Registry was ordered to liaise with the authorities of the Kingdom of the Netherlands and of the Democratic Republic of the Congo in order to, *inter alia*, determine whether the detained witnesses should remain detained pending the final outcome of their request for asylum and, if so, who should remain responsible for their detention. For its part, Trial Chamber I has ordered the Registry to also consult with the Dutch authorities on the transfer of the witness into the control of the Host State pending its decision on the asylum application. With this background into consideration, the Registrar further confirms that the ICC judges have, at no stage, issued any decision requesting the Host State to assume the custody of the four detained witnesses.

The Registrar further confirms that, to date, the ICC has not made any request to the relevant Dutch authorities to assist with the transportation of the detained witnesses to a location of departure for the purposes of returning the four detained witnesses to the Democratic Republic of the Congo.

The Registrar thanks by advance the Host State for updating her regularly with the developments of this issue before its domestic Courts and keeping her informed as to the forthcoming events and expected time frame.

The Registrar of the International Criminal Court takes this opportunity to renew to the Director of the Protocol Department of the Ministry of Foreign Affairs of the Kingdom of the Netherlands the assurances of her highest consideration.



Protocol Department
Ministry of Foreign Affairs
Kingdom of the Netherlands