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1 International Criminal Court - Pre-Trial Chamber III - Situation Central
2 African Republic - ICC-01/05-01/08 - [Ex Parte - Prosecution and Registry]
3 Closed Session - Pursuant to Decision ICC-01/05-01/08-301 dated on the
4 01-12-2008, this document is reclassified as Confidential. Pursuant to
5 Decision ICC-01/05-01/08-528(18/09/09), this document is reclassified as Public.

6 Monday, 26 May 2008 The hearing starts at 4.51 p.m.

7 JUDGE DIARRA (interpretation): Registrar, could you please
8 introduce your team, because the hearing was called for by you.

9 MR. DUBUISSON (interpretation): I am delighted to take the floor
10 first. So to -- together with me here from the Registry we have Bibiana
11 Becerra-Suarez, Legal Coordinator at the DCS; and I myself, Marc
12 Dubuisson, Director of the DCS representing the Registry.

13 JUDGE DIARRA (interpretation): The OTP, please as observers at
14 this hearing could you introduce your team.

15 MS. KNEUER: Good afternoon, your Honours. The team of the
16 Office of the Prosecutor today is composed of Mr. Massimo Scaliotti,
17 Mr. Jean-Jacques Badibanga, Ms. Miriam Spittler, and myself Petra Kneuer.

18 JUDGE DIARRA (interpretation): Thank you. This status hearing
19 was convened by the -- on the -- on the request of the Registrar, so we
20 would like to hand the floor to the Registrar for him to tell us in the
21 presence of the OTP team what he has to inform us during this hearing.

22 The floor is yours.

23 MR. DUBUISSON (interpretation): Thank you very much, President.
24 First I would like to underline and emphasise that I am not speaking here
25 and you cannot consider my words as representing the opinion of the

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1 Belgian authorities. We cannot here speculate about the decision of the
2 Belgian judicial authorities on this matter, so before I took the
3 floor -- take the floor, I wanted to make this clear.

4 Let's first go back, because this wasn't explained in the
5 document that was given to you. Let's just recall the events.

6 Saturday morning, 11.00, we informed the central authority of the
7 events. Measures were taken immediately to execute your request. For
8 mainly security and operational reasons and because of the presence of
9 children within the house the person concerned was in, the Belgian
10 authorities decided to wait before executing the request, but upon
11 another request of the OTP, the Belgian authorities decided to act before
12 22 hours. So around 20 hours, around 8.00 p.m., the Belgian authorities
13 decided to execute your requests. Thereafter, the arrest was carried out
14 before 20 hours, which enabled the federal police authorities to execute
15 a specific request by the OTP. So all this is valid and cannot be
16 rejected judiciously.

17 Thereafter, you decided to make the arrest warrant public, and
18 this decision was in turn communicated to the Belgian authorities.
19 Following our verbal note Sunday morning, which consisted in requesting
20 provisional arrest of the person concerned, we confirmed the wording of
21 paragraph 5 of your request for provisional arrest, and therefore
22 consisting in underlining to the Belgian authorities the fact that a
23 request for surrender would follow afterwards, shortly afterwards, under
24 Article 2(d) -- 92(2)(d).

25 So we worked on the basis of a list of options for provisional

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1 arrest which in Belgium involves contact with an examining judge. The
2 police -- the federal police carries out the arrest, who then goes to the
3 examining judge who issues the arrest warrant. If we had already had a
4 request for surrender we would have had to involve another Chamber, and
5 that wouldn't have been possible for Monday, and therefore, the Belgian
6 authorities, to respect your urgent request, chose that option.

7 Thereafter, and the -- this was successful and to your advantage.

8 JUDGE DIARRA (interpretation): So it was successful.

9 MR. DUBUISSON (interpretation): Yes. Of course -- of course
10 there is still the presumption of innocence, but I'm only here talking
11 about the request as such.

12 So the examining judge -- the verbal note was sent to the central
13 authorities in Belgium at 10.07 -- 57 Sunday morning, and therefore on
14 the basis of Article 52 was given to the examining judge who, in turn,
15 issued an arrest warrant and arrested the person concerned. Thereafter,
16 we were informed that the arrest had taken place, and in the document
17 sent to us, Annex 3 of the report that we sent to you, the Belgian
18 central authorities said that they agreed to transmit to the -- a request
19 for arrest and surrender of the person concerned to the court, to the
20 Belgian central authorities as soon as possible. So the Belgian
21 authorities insisted upon this happening very soon.

22 This request and insistence on the central authorities in the
23 letter to the Registry is about prejudice to the Belgian central
24 authorities. Of course we cannot speculate upon this, but it must be
25 borne in mind that at the same time of this judicial process there is

1 currently in Belgium a controversy about some statement by the Minister
2 of Foreign Affairs concerning the Congolese people.

3 You may say, well, this has -- or think that this has nothing to
4 do with our judicial procedure, but the Minister of Foreign Affairs,
5 Mr. De Gucht's, statement does not belong to our request. His statement
6 was regarding the cooperation between Belgium and the Congo. But the
7 fact that this took place at the same time as the arrest of Mr. Bemba
8 means that the Belgian authorities have to deal with two major problems
9 at the same time.

10 How is this of concern to us? Well, in view of both situations,
11 this reinforces the -- or increases the risk at that Belgians will -- in
12 Kinshasa or in the Congo will be affected because of the fact it happened
13 at the same time as this Belgian controversy to which we're not -- in
14 which we're not involved at all, and some have not really distinguished
15 between the two events. There is also a great of Belgians in the Congo,
16 which means that the security in Brussels will have to be increased.

17 So why do we have to act fast? And this is all relative. What
18 are the deadlines just now in Belgium? The fact that the examining judge
19 issued an arrest warrant on Friday means that under Belgian law the
20 arrest warrant has to be confirmed or not within seven days by the
21 counsel, Chambre du Conseil. So it must decide within seven days on
22 whether or not to keep the person detained or not. So Thursday or Friday
23 at the latest one of the Chambre du Conseil should decide. If the person
24 is then released, there are obligations for the Belgian authorities to
25 respect the Statute, and there are possibilities for appeal by the

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1 Prosecutor within 24 hours after the decision with the Chambre du
2 Conseil, and then the decision has to be taken by this council. And
3 thereafter if there is a request for arrest and surrender, the Chambre du
4 Conseil will have to deal with this new request independently, in a new
5 judicial procedure, and this would facilitate the surrender of the person
6 concerned and could free up the Belgian authorities, too, who up until
7 now have been a very efficient partner and very keen partner in the
8 procedure, and this would enable them to only have to deal with one
9 problem instead of two. And the fact that the ICC has asked an authority
10 who arrest by the Rome Statute to cooperate is recognised as something
11 positive by the ICC and other international bodies, but we still have to
12 respect, and we want to do so, respect our partners who in this question
13 have been very efficient and shown great respect for the Chamber's
14 decision.

15 This was the information I wanted to provide you with so you had
16 a bit more information than what was in the report.

17 JUDGE DIARRA (interpretation): Thank you very much for this
18 useful information. I would now like to ask the Office of the Prosecutor
19 whether they have any observations on the application, recent application
20 made by the Registry, and on what was just said. The floor is yours.

21 MS. KNEUER: My colleague very comprehensively described the
22 situation, and the Prosecution at this time has nothing to add.

23 If I may, I would like to ask for two minutes to consult with my
24 colleague.

25 (Prosecution counsel confer)

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1 JUDGE DIARRA (interpretation): Have you finished consulting?

2 MS. KNEUER: We've finished consulting, yes.

3 JUDGE DIARRA (interpretation): The floor is yours to add any
4 further information or observations.

5 MS. KNEUER: I would like to reiterate that we have nothing to
6 add to the observation conveyed by my colleague from the Registry. I
7 would like to add that the Prosecution's preparing a response to your
8 decision from last week. We are very thoroughly reviewing the material
9 to -- to provide you the relevant information you requested for, and by
10 tomorrow we will submit our filing.

11 JUDGE DIARRA (interpretation): Prosecutor, we wouldn't have
12 requested these documents at this hearing. I don't think it's the right
13 context to request this. We were just counting on your diligence.

14 I would like to now address the Registry and the Registrar. The
15 Judges listened attentively to your contribution to complement the recent
16 document, but we would like to add that Rule 188 of the Rules of
17 Procedure and Evidence gives us 60 days to provide the document you
18 requested. Up until now, we exceptionally have worked very expeditiously
19 for reasons that were worthwhile. I would not like to diminish the
20 reasons given by the Belgian government and to pay tribute to there
21 request. I would like, however, to bring the Chamber's working tempo
22 back to a normal tempo to guarantee the quality of the documents we
23 provide you with.

24 We have taken note of your statement and will make our decision
25 known, but before we end the hearing I would like to ask my colleagues

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1 whether they have any additional information to add to what I have just
2 said.

3 JUDGE KAUL: Thank you, Madam President. I have for the time
4 being no additional comments. I simply would like to express my very
5 clear agreement that this Chamber, as usual, will have to work in a -- in
6 a very serious and considered manner, and this is the obligation under
7 which we find ourselves, and this may have an impact on the decisions
8 that we will take.

9 JUDGE DIARRA (interpretation): Judge Trendafilova.

10 JUDGE TRENDAFILOVA: I have nothing to add. I have listened
11 very, very carefully to what Mr. Dubuisson has explained. We follow very
12 closely the events, and the Chamber will do its best.

13 JUDGE DIARRA (interpretation): I would like to thank the Office
14 of the Prosecutor for their spontaneous presence here, and I would like
15 to thank the Registrar and thank the interpreters, the President's
16 privileged partners, because of her linguistic limitations.

17 I would like to close the session. Thank you.

18 The hearing ends at 5.12 p.m.

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