

Ex Parte - Closed Session

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1 International Criminal Court - Trial Chamber I

2 Situation Democratic Republic of the Congo - ICC-01/04-01/06

3 Ex Parte exclusively destinated to OTP - Registry - VWU

4 Closed Session Wednesday, 9 April 2008. The hearing starts at 11.26 a.m.

5 PRESIDING JUDGE FULFORD: We've now been joined for the sake of the record
6 by two representatives of the Victims and Witnesses Unit, and we're grateful
7 to you both for your attendance. Mr. Withopf, would it be most convenient if
8 we start this final part of today's hearing by giving you an opportunity to
9 respond to the Victims and Witnesses Unit's latest filing which you seek to
10 make some observations on?

11 MR. WITHOPF: That's indeed very convenient, Mr. President, your Honours,
12 and I was hoping that this would be the case before we discuss the nitty-
13 gritty but important details. The Prosecution has actually asked for a
14 hearing on the 28 March filing of the Victims and Witnesses Unit, and we have
15 done so mainly for two reasons, Mr. President, your Honours. We want to
16 address some of the arguments which have been described as the general
17 arguments by Victims and Witnesses Unit, and they concern the roles of
18 Victims and Witnesses Unit and the OTP, and of course they also concern the
19 security situation in Ituri and Bunia. And of course we also in a second
20 step wish to address the factual submissions Victims and Witnesses Unit has
21 made in respect of the individual cases of witnesses, and we believe the
22 Chamber's particularly interested in such submissions. In this context I add,
23 and I wish to say that I add hesitantly, that we also have requested that
24 hearing because Victims and Witnesses Unit has chosen to describe the factual
25 submissions of the Office of the Prosecutor as misleading. I refer to page 5

1 of the Victims and Witnesses Unit's filing.

2 Obviously misleading is a very serious allegation which the
3 Office of the Prosecutor cannot accept, and it's against this background
4 it's needless to say that we appreciate the opportunity to have this
5 hearing and make additional submissions.

6 Mr. President and your Honours, I will cover the general
7 arguments, and my colleague Ms. Samson will later on cover the factual
8 aspects on the individual cases, and I promise you, Mr. President, your
9 Honours, that we both will be very selective and short.

10 On the general arguments of the Victims and Witnesses Unit. I
11 wish to emphasise from the outset, and I believe the Chamber is very well
12 aware of this, that the Office of the Prosecutor will rely on a
13 comparatively low number of Prosecution witnesses. You have realised,
14 Mr. President, your Honours, that the number of witnesses has decreased,
15 and it has is significantly decreased. Currently there are 31 witnesses
16 on our trial witness list. And the Prosecution has done so for a certain
17 reason, Mr. President, your Honours. It has reduced its number of
18 witnesses to the absolute minimum, and I repeat, to the absolute minimum.
19 Also and in particular related to the issues that came up in the context
20 of the Office of the Prosecutor having made referrals to Victims and
21 Witnesses Unit that in a number of instances were not accepted.

22 The Prosecution has also made this choice to satisfy the
23 statutory right of the accused to an expeditious trial, and this right
24 can only be accommodated, in our view, if Victims and Witnesses Unit is
25 not overloaded with requests for referrals.

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1 Against this background, Mr. President, your Honours, the Office
2 of the Prosecutor is, however, of the view and is of the strong view that
3 the remaining witnesses, which are the absolute minimum, in the event the
4 Office of the Prosecutor has determined that they need protection should
5 be provided protection by Victims and Witnesses Unit, and I emphasise our
6 submission is that protection is only provided adequately if it succeeds
7 in eliminate all foreseeable risks.

8 In this context, Mr. President, your Honours, the Office of the
9 Prosecutor maintains its view that Ituri, and in particular Bunia, is an
10 area of high risk, and this has been confirmed by the decision, by the
11 recent decision of the Single Judge in the Katanga case. And we have
12 noticed the Victims and Witnesses Unit observation in this case and I
13 refer to paragraph 17 of their 28 March submission, that in the view of
14 the Victims and Witnesses Unit the Single Judge made her decision, and I
15 quote: "In the --"

16 PRESIDING JUDGE FULFORD: Just before you do, Mr. Withopf,
17 forgive me interrupting. Is this decision of the Single Judge in the
18 Katanga case a public document?

19 MR. WITHOPF: I must admit, Mr. President, your Honours, I'm not
20 in a position to respond to this question immediately, but I can make a
21 submission to the extent that it addresses the Victims and Witnesses
22 Unit's filing.

23 PRESIDING JUDGE FULFORD: Well, I'm -- I would be very concerned
24 about us being referred to the jurisprudence of another Judge in another
25 court or another Chamber of this court if the entirety of the decision is

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1 not available to us, and so I would need -- I think before you start
2 quoting from the Single Judge, we need to know whether this is
3 jurisprudence that we can read.

4 MR. WITHOPF: Mr. President, forgive me. I need to confer with
5 my case manager.

6 PRESIDING JUDGE FULFORD: But of course.

7 (Prosecution confer)

8 MR. WITHOPF: Mr. President, your Honours, at this stage we
9 unfortunately are not in a position to verify whether this decision is
10 publicly available. There are indications that it's probably not. I
11 will refrain from making further observations on this.

12 PRESIDING JUDGE FULFORD: I think you should, Mr. Withopf. And
13 if you'll excuse me being mildly censorious, I think there is a lesson to
14 be learned in this regard. And forgive me for being mildly censorious,
15 you should have checked before you started to refer to the Single Judge's
16 decision as to whether or not this is a document that could be quoted in
17 a forum such as this. But I'm putting it mildly. It's perhaps a lesson
18 to be learned and I say no more about it.

19 Right. Can we carry on with the next part of the submission that
20 avoids the Single Judge.

21 MR. WITHOPF: I do take your point, Mr. President, and I do
22 apologise.

23 I made reference, Mr. President, Your Honours, I wish to
24 emphasise that the Prosecution has planned its disclosure obligations and
25 the compliance with its disclosure obligations and in particular its

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1 timing against the background of agreed standards and procedures, agreed
2 with Victims and Witness Unit, including on the assessment of the level
3 of risk, and these agreements were frustrated by the Victims and
4 Witnesses Unit, and this situation, and I wish to emphasise nothing else,
5 has resulted in the delays in respect of complete disclosure by the
6 Prosecution. And I wish to re-emphasise in this context that the Victims
7 and Witnesses Unit has chosen to not apply the agreed-upon criteria any
8 more and thus has applied a different assessment of the level of risk,
9 and I add, without proper consultation with the Office of the Prosecutor.

10 PRESIDING JUDGE FULFORD: Mr. Withopf, I'm sorry. This really is
11 going over old ground now. This is -- this is all territory that we've
12 had adequate submission on before. This is really to give you an
13 opportunity to -- to focus a response on the particular matters, really
14 new matters raised by the Victims and Witnesses Unit in their filing, but
15 so far your submissions have all been dealt with on an earlier occasion.

16 MR. WITHOPF: Mr. President, your Honours, I do concur with the
17 observation. The Office of the Prosecutor has, however, chosen that I
18 should make these observations.

19 PRESIDING JUDGE FULFORD: My compliments to the Prosecutor. I'm
20 going to, I'm afraid, stop you from advancing repetitive submissions, but
21 I welcome submissions on any new matters which address the material
22 raised by the Victims and Witnesses Unit.

23 MR. WITHOPF: Well understood, Mr. President and your Honours. I
24 therefore just make reference to what has been said in the respective
25 filings without repeating it and I will leave it to my colleague,

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1 Ms. Samson, to provide details on individual cases.

2 PRESIDING JUDGE FULFORD: Thank you very much. Yes, Ms. Samson.

3 MS. SAMSON: Good afternoon, your Honour -- good morning rather.

4 I'll be focusing only on certain number of witnesses that have been

5 touched upon by the Victims and Witnesses Unit's response, and in

6 addition to providing certain reply material to the VWU response, I'll

7 also add because as I understand it the Chamber was interested in any

8 updates on the situation of certain witnesses. So with your leave, I

9 would do them at the same time.

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16 Pages 6 to 29 expunged - Ex parte in closed session

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25 Recess taken at 12.29 p.m.