

PRESS RELEASE

ICC-witnesses can seek asylum in the Netherlands

Amsterdam, 28 December 2011 - Today, the district court of Amsterdam ruled that the Dutch asylum-procedure based on the Immigration Act 2000 is indeed available to three witnesses from the Democratic Republic of Congo (the 'DRC') who were called to testify before the International Criminal Court (the 'ICC').

The Minister of Immigration and Asylum had argued that Dutch procedures based on the Immigration Act were inapplicable in the case of asylum-applications by ICC-witnesses because the witnesses were under ICC-jurisdiction. Moreover, applicability of the Immigration Act would contravene agreements between the ICC and the DRC. Therefore, the Minister asserted that *sui generis* procedure based on general Dutch administrative law ought to apply. However, the district court held that neither Dutch law nor the regulations concerning the ICC contained any grounds that would render the Immigration Act inapplicable to such (asylum) applications (par. 9.9). This would only be different if applicability of (sections of) the Immigration Act would hinder the ICC from functioning properly; this is not at issue in this case. With reference to the host state agreement, the district court furthermore pointed out that the ICC is required to offer its full cooperation to proceedings of this kind by Dutch authorities (par. 9.8).

The immigration authorities have four weeks to submit a higher appeal against this decision by the district court of Amsterdam. The deadline for a decision on the asylum-applications has now been set for 28 June 2012 (par. 9.10).

Background

The witnesses—prisoners in the DRC—had been transferred temporarily to the ICC-detention facility pending their testimony; they had filed the applications for asylum in light of that testimony. As it does not possess territory of its own, the ICC had requested that the Dutch State assess the scope of the principle of *non-refoulement* in this case and had therefore suspended the immediate return of the witnesses to the DRC (ICC-01/04-01/07, 9 June 2011, par. 64). The Minister of Immigration and Asylum was willing to investigate the risks the witnesses faced, but only based on a *sui generis* procedure based on general Dutch administrative law.

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