

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08

Date: 3 March 2010

TRIAL CHAMBER III

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito
Judge Joyce Aluoch

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
*v. JEAN-PIERRE BEMBA GOMBO***

Public

Redacted version of "Decision on the 'Observations of the Victims and Witnesses Unit on the re-classification of ICC-01/05-01/08-72-Conf with two confidential Annexes and ICC-01/05-01/08-95-Conf'" (ICC-01/05-01/08-676-Conf)

No. ICC-01/05-01/08

1/17

3 March 2010

Decision to be notified, in accordance with regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor
 Ms Fatou Bensouda, Deputy Prosecutor
 Ms Petra Kneuer, Senior Trial Lawyer

Counsel for the Defence
 Mr Nkwebe Liris
 Mr Aimé Kilolo-Musamba

Legal Representatives of the Victims
 Ms Marie-Edith Douzima-lawson

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
 Participation/Reparation**

**The Office of Public Counsel for
 Victims**
 Ms Paolina Massidda

**The Office of Public Counsel for the
 Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar
 Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit
 Ms Maria Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations
 Section**

Other

Trial Chamber III (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court” or “ICC”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* hereby delivers the following Decision on the “Victims and Witnesses Unit’s Observations on the re-classification of ICC-01/05-01/08-72-Conf with two confidential Annexes and ICC-01/05-01/08-95-Conf”.¹

I. Background and Submissions

1. On 18 September 2009, Pre-Trial Chamber II issued its “Decision on Re-Classification and Unsealing of Certain Documents and Decisions”,² in which, *inter alia*, it decided to re-classify as public and as public-redacted a number of Decisions and documents submitted by the parties and participants during the pre-trial phase of the present case.

2. Having rehearsed the principle that the accused is entitled to a public hearing (Article 67(1) of the Rome Statute (“Statute”))³ and taking into account the observations of the parties and participants,⁴ the Single Judge set out her approach to re-classification. The first question she identified is whether the content of the documents is already known to the defence and to the public. If it is not, the second question is whether making it public will adversely affect: i) the protection and privacy of victims and witnesses (Articles 57(3)(c) and 68(1) of the Statute); ii) the effectiveness of a request for cooperation between States Parties and the Court (Articles 57(3)(e), 87 and 93 of the Statute and Rule 99 of the Rules of Procedure and Evidence (“Rules”)); iii) the privacy of Mr Jean-Pierre Bemba Gombo (“Mr Bemba”); and iv) the effectiveness of further ongoing investigations.⁵

¹ Victims and Witnesses Unit’s Observations on the re-classification of ICC-01/05-01/08-72-Conf with two confidential Annexes and ICC-01/05-01/08-95-Conf, 28 October 2009, ICC-01/05-01/08-576-Conf.

² Decision on Re-Classification and Unsealing of Certain Documents and Decisions, 18 September 2009, ICC-01/05-01/08-528.

³ ICC-01/05-01/08-528, paragraph 9.

⁴ ICC-01/05-01/08-528, paragraph 5.

⁵ ICC-01/05-01/08-528, paragraph 11.

3. Moreover, the Single Judge noted that in certain instances, the level of confidentiality suggested by the parties and participants and the extent of the proposed redactions, did not adequately satisfy the principle that the proceedings should be public, whilst they simultaneously failed sufficiently to protect the victims and witnesses and Mr Bemba's right to privacy.⁶
4. In all the circumstances, the Single Judge decided to re-classify as public and as public-redacted (with the redactions set out in Annex 4 of the Decision),⁷ a number of documents submitted by the Victims and Witnesses Unit ("VWU") which she requested the VWU to re-file.
5. On 28 October 2009, the VWU submitted its observations on the Decision on re-classification concerning document ICC-01/05-01/08-72-Conf,⁸ the two confidential, *ex parte* annexes⁹ and document ICC-01/05-01/08-95-Conf.¹⁰ The VWU asserted that before implementing the Pre-Trial Chamber's Decision on re-classification, it would like to bring some concerns to the attention of the Chamber.¹¹
6. The VWU averred that the identified documents should not be further disclosed, or, if filed publicly, there ought to be additional redactions.¹² The information of most concern relates to the VWU's [REDACTED], and the Unit

⁶ ICC-01/05-01/08-528, paragraph 15.

⁷ Annex 4 to Decision on Re-Classification and Unsealing of Certain Documents and Decisions, 18 September 2008, ICC-01/05-01/08-528-Conf-Exp-Anx4.

⁸ Victims and Witnesses Unit's observations on the protection measures available in relation to the individuals concerned by the Prosecutor's proposal for redaction, 18 August 2008, ICC-01/05-01/08-72-Conf.

⁹ Annex 1 to Victims and Witnesses Unit's observations on the protection measures available in relation to the individuals concerned by the Prosecutor's proposal for redaction, 18 August 2008, ICC-01/05-01/08-72-Conf-Exp-Anx1; Annex 2 to Victims and Witnesses Unit's observations on the protection measures available in relation to the individuals concerned by the Prosecutor's proposal for redaction, 18 August 2008, ICC-01/05-01/08-72-Conf-Exp-Anx2.

¹⁰ Request for clarification of the "First Decision on the Prosecutor's request for redactions", 5 September 2008, ICC-01/05-01/08-95-Conf.

¹¹ ICC-01/05-01/08-576-Conf, paragraph 3.

¹² *Ibid.*

particularly resisted [REDACTED].¹³ [REDACTED].¹⁴ Finally, the VWU submitted that as a general rule, under Regulation 92 of the Regulations of the Registry, these procedures and measures are treated confidentially, to ensure the safety of the witnesses.¹⁵

7. Consequently, the VWU requested further redactions to document ICC-01/05-01/08-72-Conf¹⁶ and document ICC-01/05-01/08-95-Conf¹⁷ and proposed redactions to document ICC-01/05-01/08-72-Conf-Anx1¹⁸ and document ICC-01/05-01/08-72-Conf-Exp-Anx2.¹⁹

II. Relevant Provisions

8. In accordance with Article 21(1) of the Statute, the Trial Chamber has considered the following provisions:

Article 64 of the Statute

Functions and powers of the Trial Chamber

[...]

6. In performing its functions prior to trial or during the course of a trial, the Trial Chamber may, as necessary:

[...]

(e) Provide for the protection of the accused, witnesses and victims;

[...]

Article 67

Rights of the accused

¹³ ICC-01/05-01/08-576-Conf, paragraph 5.

¹⁴ ICC-01/05-01/08-576-Conf, paragraph 7.

¹⁵ ICC-01/05-01/08-576-Conf, paragraph 6.

¹⁶ Annex 1 to Victims and Witnesses Unit's Observations on the re-classification of ICC-01/05-01/08-72-Conf with two confidential Annexes and ICC-01/05-01/08-95-Conf, 28 October 2009, ICC-01/05-01/08-576-Conf-Exp-Anx1.

¹⁷ Annex 4 to Victims and Witnesses Unit's Observations on the re-classification of ICC-01/05-01/08-72-Conf with two confidential Annexes and ICC-01/05-01/08-95-Conf, 28 October 2009, ICC-01/05-01/08-576-Conf-Exp-Anx4.

¹⁸ Annex 2 to Victims and Witnesses Unit's Observations on the re-classification of ICC-01/05-01/08-72-Conf with two confidential Annexes and ICC-01/05-01/08-95-Conf, 28 October 2009, ICC-01/05-01/08-576-Conf-Exp-Anx2.

¹⁹ Annex 3 to Victims and Witnesses Unit's Observations on the re-classification of ICC-01/05-01/08-72-Conf with two confidential Annexes and ICC-01/05-01/08-95-Conf, 28 October 2009, ICC-01/05-01/08-576-Conf-Exp-Anx3.

1. In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality.

[...]

Article 68 of the Statute

Protection of the victims and witnesses and their participation in the proceedings

1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

[...]

4. The Victims and Witnesses Unit may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance as referred to in Article 43, paragraph 6.

[...]

Rule 16 of the Rules

Responsibilities of the Registrar relating to victims and witnesses

[...]

Agreements on relocation and provision of support services on the territory of a State of traumatized or threatened victims, witnesses and others who are at risk on account of testimony given by such witnesses may be negotiated with the States by the Registrar on behalf of the Court. Such agreements may remain confidential.

Rule 17 of the Rules

Functions of the Unit

[...]

2. The Victims and Witnesses Unit shall, *inter alia*, perform the following functions, in accordance with the Statute and the Rules, and in consultation with the Chamber, the Prosecutor and the defence, as appropriate:

(a) With respect to all witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses, in accordance with their particular needs and circumstances:

(i) Providing them with adequate protective and security measures and formulating long- and short-term plans for their protection;

(ii) Recommending to the organs of the Court the adoption of protection measures and also advising relevant States of such measures;

(iii) Assisting them in obtaining medical, psychological and other appropriate assistance;

[...]

(vi) Cooperating with States, where necessary, in providing any of the measures stipulated in this rule;

[...]

Rule 86 of the Rules

General Principle

A Chamber in making any direction or order, and other organs of the Court in performing their functions under the Statute or the Rules, shall take into account the needs of all victims and witnesses in accordance with article 68, in particular, children, elderly persons, persons with disabilities and victims of sexual or gender violence.

Rule 87 of the Rules

Protective measures

1. Upon the motion of the Prosecutor or the defence or upon the request of a witness or a victim or his or her legal representative, if any, or on its own motion, and after having consulted with the Victims and Witnesses Unit, as appropriate, a Chamber may order measures to protect a victim, a witness or another person at risk on account of testimony given by a witness pursuant to article 68, paragraphs 1 and 2. The Chamber shall seek to obtain, whenever possible, the consent of the person in respect of whom the protective measure is sought prior to ordering the protective measure.

[...]

3. A Chamber may, on a motion or request under sub-rule 1, hold a hearing, which shall be conducted in camera, to determine whether to order measures to prevent the release to the public or press and information agencies, of the identity or the location of a victim, a witness or other person at risk on account of testimony given by a witness by ordering, *inter alia*:

- (a) That the name of the victim, witness or other person at risk on account of testimony given by a witness or any information which could lead to his or her identification, be expunged from the public records of the Chamber;
- (b) That the Prosecutor, the defence or any other participant in the proceedings be prohibited from disclosing such information to a third party;
- (d) That a pseudonym be used for a victim, a witness or other person at risk on account of testimony given by a witness; or
- (e) That a Chamber conduct part of its proceedings in camera.

Regulation 92 of the Regulations of the Registry

Security arrangements

1. The Registry shall implement and coordinate appropriate procedures and measures for the protection and security to ensure the safety of witnesses, victims who appear before the Court and persons at risk, including accompanying support persons.

2. Procedures and measures referred to in sub-regulation 1 shall be confidential.

Regulation 93 of the Regulations of the Registry

Local protection measures

1. The Registry shall implement measures for the protection of witnesses, victims who appear before the Court and persons at risk on the territory of the State where an investigation is taking place.

2. Procedures and measures referred to in sub-regulation 1 shall be confidential.

Regulation 95 of the Regulations of the Registry

Protection arrangements

The Registry shall provide participants with round-the-clock telephone access for the purpose of initiating an application for protection or for any enquiry relating to the safety of witnesses, victims who appear before the Court or persons at risk of harm or death.

Regulation 96 of the Regulations of the Registry

Protection programme

1. The Registry shall take all necessary measures to maintain a protection programme for witnesses, including accompanying support persons, and others considered to be at risk of harm and/or death on account of a testimony given by such witnesses or as a result of their contact with the Court.
 2. An application for inclusion in the protection programme may be filed by the Prosecutor or by counsel,
 3. In assessing admission to the protection programme, in addition to the factors set out in article 68, the Registry shall consider, *inter alia*, the following:
 - (a) The involvement of the person before the Court;
 - (b) Whether the person himself or herself, or his or her close relatives are endangered because of their involvement with the Court; and
 - (c) Whether the person agrees to enter the protection programme.
 4. Inclusion in the protection programme shall be subject to the decision of the Registrar after the assessment made under sub-regulation 3.
 5. Before being included in the protection programme, the person or –where the person is under the age of 18 or otherwise lacks the legal capacity to do so –his or her representative, shall sign an agreement with the Registry.
9. In light of Article 21(3) of the Statute, and taking into consideration the Decision of the Appeals Chamber that it “makes the interpretation as well as the application of the law applicable under the Statute subject to internationally recognised human rights”,²⁰ the Trial Chamber has considered Article 14 of the International Covenant on Civil and Political Rights, Article 6 of the European Convention on Human Rights and Article 8(5) of the American Convention on Human Rights.

²⁰ Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19 (2) (a) of the Statute of 3 October 2006, 14 December 2006, ICC-01/04-01/06-772, paragraph 36.

III. Analysis and Conclusions

10. By Article 67(1) of the Statute, the accused is entitled to a public hearing having regard to the provisions of the Statute; any derogation from that principle must be for a satisfactory reason; and the proceedings must remain fair. As noted by the European Court of Human Rights ("ECtHR"), "[t]he public character of proceedings protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts can be maintained".²¹

11. However, as the ECtHR noted, the principle of public proceedings is not absolute. Article 6 of the European Convention on Human Rights provides for limitations in the interest of morals, public order or national security in a democratic society, in the interests of juveniles, the protection of the private life of the parties, or in the interests of justice. Therefore, the ECtHR has stated:

Moreover, it is established in the Court's case-law that, even in a criminal-law context where there is a high expectation of publicity, it may on occasion be necessary under Article 6 to limit the open and public nature of proceedings in order, for example, to protect the safety or privacy of witnesses or to promote the free exchange of information and opinion in the pursuit of justice.²²

12. Article 14 of the International Covenant on Civil and Political Rights similarly describes this principle, and Article 8(5) of the American Convention on Human Rights consistently provides that criminal proceedings shall be public, except insofar as maybe necessary to protect the interests of justice.

13. Within its statutory framework (*viz.* Article 68(2) of the Statute), the Court's obligation to protect witnesses and victims is expressly stipulated as an

²¹ European Court of Human Rights, *B. and P. v. The United Kingdom*, Application Nos. 36337/97 and 35974/97, Judgment, 24 April 2001, paragraph 36.

²² European Court of Human Rights, *B. and P. v. The United Kingdom*, Application Nos. 36337/97 and 35974/97, Judgment, 24 April 2001, paragraph 37.

exception to the principle of public hearings provided for in Article 67 of the Statute. Therefore, in considering this request, the Chamber underscores its duty to take all necessary steps in order to safeguard the safety, physical and psychological well-being, dignity and private life of victims and witnesses, pursuant to Article 68(1) of the Statute.

14. Against this background, the Chamber has reviewed the information provided by the VWU and it has applied a case-by-case analysis of the circumstances relevant to each document, as set out below.

Document ICC-01/05-01/08-72-Conf

15. This document was filed as a confidential, *ex parte* document by the VWU on 18 August 2008. On 1 December 2008, it was re-classified as confidential and available to the prosecution and defence by the Pre-Trial Chamber.²³ On 18 September 2009, the Pre-Trial Chamber decided to re-classify it as public-redacted, and accordingly, it authorised certain redactions.²⁴ However, the VWU now submits that further redactions are necessary prior to filing a public redacted version. In particular, the VWU seeks to redact the last sentence of paragraph 8, paragraphs 12 to 15 and paragraphs 34 to 35 in their entirety, the last sentence of paragraph 39, the first sentence of paragraph 40 and footnotes number 13, 14, 15 and 18.²⁵

16. The last sentence of paragraph 8 refers to the fact that [REDACTED], and to the importance of assessing the level of risk in each particular case for participation in the ICC Protection Programme (“ICCP”). Given the nature of the information, the Chamber is of the view that only the part relating to

²³ Decision on Re-classification and Unsealing of Certain Documents, 1 December 2008, ICC-01/05-01/08-301, paragraph 8 and page 7, operative paragraph c.xvi).

²⁴ ICC-01/05-01/08-528, pages 17 – 18, operative paragraph g).

²⁵ ICC-01/05-01/08-576-Conf-Exp-Anx1.

[REDACTED] should be redacted, and thus it authorises the redaction of the following phrase: [REDACTED], pursuant to Article 68(1) of the Statute and Rule 87 of the Rules.

17. Paragraphs 12 to 15 provide detailed information about the functioning of the ICCPP and [REDACTED]. In particular, paragraph 12 states that the ICCPP provides some of the services that domestic judicial bodies have available from specialised police or witness protection units but that the Court does not have its own army or police force. Paragraph 13 refers to [REDACTED]. Paragraph 14 asserts that [REDACTED]. Finally, paragraph 15 refers to [REDACTED], and to the fact that the ICCPP requires that participants have to leave their current life and location, with the consequent need to provide them with wholly new circumstances.

18. The Chamber observes that the statement in paragraph 12 relating to the fact that the Court does not have its own army or police force is already known to the general public, since it can be inferred from the statutory provisions of the Court, and thus, a redaction is unnecessary. However, the Chamber is satisfied that the last sentence of the paragraph, in as much as it states that [REDACTED], should not be disclosed, and therefore, authorises its redaction pursuant to Article 68(1) of the Statute and Rule 87 of the Rules.

19. The same conclusion should be applied to paragraphs 13 and 14, insofar as they also refer to [REDACTED], and therefore, the Chamber authorises the redactions pursuant to Article 68(1) of the Statute and Rule 87 of the Rules.

20. Concerning the redactions suggested for paragraph 15, the Chamber observes that one line of the paragraph is already redacted pursuant to an Order of Pre-Trial Chamber II.²⁶ This line refers to the fact that [REDACTED]. As stated

²⁶ ICC-01/05-01/08-528-Conf-Exp-Anx4.

above, the redactions sought relate to the [REDACTED] and to the fact that the ICCPP requires that the participants are removed from their current life and location. The Chamber notes that the fact that the VWU is able to enter into agreements on relocation is already publicly known (see Rule 16(4) of the Rules). Therefore, the Chamber is satisfied that only the line mentioning [REDACTED] should be redacted, and therefore, authorises the following redaction: [REDACTED], pursuant to Article 68(1) of the Statute and Rule 87 of the Rules.

21. The redactions proposed for paragraphs 34 and 35 relate to [REDACTED]. In particular, paragraph 34 refers to [REDACTED]. Paragraph 35 mentions [REDACTED]. The Chamber is of the view that since this information relates [REDACTED], it should not be disclosed, and therefore, it authorises the redactions, pursuant to Article 68(1) of the Statute and Rule 87 of the Rules.
22. The VWU seeks to redact the last sentence of paragraph 39, which states that if, after the assessment carried out by the VWU as to the level of risk faced by witnesses, new information arises that suggests any material change, the possibility of referring the individual concerned for participation in the ICCPP remains open. The Chamber notes that, apart from this last line, paragraph 39 is currently redacted in its entirety. The information referred to in this line is of general nature, and therefore, the Chamber is of the view that the redactions already in place are sufficient.
23. The redactions proposed for paragraph 40 relate to the fact the VWU recommended that the Pre-Trial Chamber monitors the non-privileged communications of the accused after information was disclosed to the defence, at least, on a random basis, whilst footnote 18 adds that full-time monitoring should be based on the intelligence available at the material time. The Chamber observes that this information is already public, since it is

contained in the “First decision on the Prosecutor's request for redactions”,²⁷ which was re-classified as public on 18 September 2009.²⁸ Therefore, the Chamber is of the view that this redaction is unnecessary.

24. Finally, footnotes 13 to 15 refer to Annexes 1 and 2 of this document, which are examined below. Given that, for the reasons rehearsed in the subsequent paragraphs, the Chamber is of the view that these annexes should remain confidential, the Chamber authorises the redactions to these footnotes, pursuant to Article 68(1) of the Statute and Rule 87 of the Rules.

Document ICC-01/05-01/08-72-Conf-Anx1

25. This document was filed under seal, *ex parte* by the VWU on 18 August 2008. The Single Judge ordered its reclassification as confidential on 1 December 2008.²⁹ On 18 September 2009, Pre-Trial Chamber II decided to re-classify it as public and requested the VWU to re-file it accordingly.³⁰ The VWU submits that the document should retain its confidential status; however, in case the Chamber is of a contrary view, the VWU suggests that redactions are necessary before filing a public version.³¹ In particular, out of the thirty-two paragraphs which form the report, the VWU seeks to redact paragraphs 4 to 26 and paragraphs 28 to 30 in their entirety.³²

26. This document contains a detailed report on [REDACTED]. The defence is already aware of the contents of this report because it was re-classified as confidential but available to the prosecution and defence by Pre-Trial

²⁷ First decision on the Prosecutor's request for redactions, 31 August 2008, ICC-01/05-01/08-85.

²⁸ ICC-01/05-01/08-528.

²⁹ Decision on Re-classification and Unsealing of Certain Documents, 1 December 2008, ICC-01/05-01/08-301.

³⁰ ICC-01/05-01/08-528, page 13, operative paragraph c).

³¹ ICC-01/05-01/08-576-Conf, paragraphs 10 and 11.

³² ICC-01/05-01/08-576-Conf-Exp-Anx2.

Chamber II.³³ Therefore, the question before the Chamber is whether the document should be available to the general public.

27. The Chamber observes that once this document is made public in the context of the present case, it would necessarily become public for other cases currently before the Court, and for future cases. Undoubtedly, the Chamber is ill-equipped to analyse the risks involved for those other cases because this requires a detailed understanding of the facts and issues therein, which the Chamber self-evidently does not possess.

28. After a careful assessment of the report, the Chamber is of the opinion that disclosure of [REDACTED].

29. As stated above, the VWU submits that this document should retain its current level of confidentiality; however, in case the Chamber is of a contrary view, it proposes a number of redactions. The Chamber considers that the suggested redactions render the report almost illegible since, as noted above, almost the entirety of the document will not be disclosed.

30. The Chamber observes that the general public and the defence is already aware of the way in which the programme generally operates, since this information is set out in the Rome Statute framework, and therefore, the Chamber is satisfied that disclosure of this document is unnecessary, because the defence is already in possession of sufficient information.

Document ICC-01/05-01/08-72-Conf-Anx2

31. This document was filed as an under seal, *ex parte* document by the VWU on 18 August 2008. The Single Judge ordered its reclassification as confidential

³³ ICC-01/05-01/08-301, paragraph 8 and page 7, operative paragraph c.xvii).

on 1 December 2008.³⁴ On 18 September 2009, Pre-Trial Chamber II decided to re-classify it as public, and requested the VWU to re-file it accordingly.³⁵ The VWU submits that it should retain its confidential status; however, in case the Chamber reaches a contrary view, the VWU submits that redactions are necessary before a public version is filed.³⁶ Out of the six paragraphs which form the report, the VWU seeks to redact paragraphs 3 to 5 in their entirety and the first sentence of paragraph 6.³⁷

32. The document is a detailed report on [REDACTED].

33. The Chamber is of the view that the analysis set out above for document ICC-01/05-01/08-72-Conf-Exp-Anx1 is equally applicable in this situation, and thus, the Chamber is satisfied that disclosure of this report is unnecessary.

Document ICC-01/05-01/08-95-Conf

34. This document was filed confidentially by the VWU on 5 September 2008. On 18 September 2009, Pre-Trial Chamber II decided to re-classify it as public-redacted, and, accordingly, it authorised a number of redactions.³⁸ However, the VWU submits that further redactions are necessary before a public redacted version is filed. In particular, the VWU seeks to redact certain information contained in paragraph 3 which relates to the fact that the VWU recommended to the Pre-Trial Chamber that non-privileged conversations of Mr Bemba should be monitored.³⁹

³⁴ Decision on Re-classification and Unsealing of Certain Documents, 1 December 2008, ICC-01/05-01/08-301.

³⁵ ICC-01/05-01/08-528, page 13, operative paragraph c).

³⁶ ICC-01/05-01/08-576-Conf, paragraphs 10 and 11.

³⁷ ICC-01/05-01/08-576-Conf-Exp-Anx3.

³⁸ ICC-01/05-01/08-528, pages 17 – 18, operative paragraph g).

³⁹ ICC-01/05-01/08-576-Conf-Exp-Anx4.

35. As set out above, this information is already in the public domain, since it is contained in the "First decision on the Prosecutor's request for redactions",⁴⁰ which was re-classified as public on 18 September 2009.⁴¹ Therefore, the Chamber considers that the requested redactions are unnecessary.

IV. Conclusions

36. For the above reasons, the Chamber hereby:

- a) grants certain redactions requested for document ICC-01/05-01/08-72-Conf, as detailed above;
- b) refuses certain other redactions requested for document ICC-01/05-01/08-72-Conf, as detailed above;
- c) orders that documents ICC-01/05-01/08-72-Conf-Anx1 and ICC-01/05-01/08-72-Conf-Anx2 are to remain confidential; and
- d) refuses the redactions requested for document ICC-01/05-01/08-95-Conf for the reasons set out above.

37. A public version of this Decision will be issued in due course.

⁴⁰ ICC-01/05-01/08-85.

⁴¹ ICC-01/05-01/08-528, page 12, operative paragraph a).

Done in both English and French, the English version being authoritative.



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge Joyce Aluoch

Dated this 3 March 2010

At The Hague, The Netherlands