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Pénale
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**International
Criminal
Court**

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PRE-TRIAL CHAMBER III

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul
Judge Mauro Politi

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

Public Document

With confidential Annex *ex parte* Prosecutor only

**PUBLIC REDACTED VERSION OF ICC-01/05-01/08-215-Conf
Third Decision on the Prosecutor's Requests for Redactions and Related Request
for the Regulation of Contacts of Jean-Pierre Bemba Gombo**

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

The Office of the Prosecutor

Fatou Bensouda, Deputy Prosecutor

Petra Kneuer, Senior Trial Lawyer

Counsel for the Defence for

Nkwebe Liriss

Tjarda E. Van Der Spoel

Aimé Kilolo-Musamba

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Simo Väätainen

Detention Section

**Victims Participation and Reparations
Section**

Other

1. **Pre-Trial Chamber III** (the “Chamber”) of the International Criminal Court (the “Court”) received on 30 September 2008¹ and 17 October 2008² further requests for redactions of information in twelve additional witness statements upon which the Prosecutor intends to rely at the confirmation of charges hearing. In addition, the Chamber has been seized of a request to prohibit, regulate and/or set conditions for conduct between the detained person and any other person, with the exception of his counsel.

2. The requests for redactions of information submitted by the Prosecutor on 30 September 2008 and 17 October 2008 will be examined together in the present decision and are referred to as “Prosecutor’s Additional Applications for Redactions”.

3. The present decision is classified as confidential although it refers to the existence of documents and, as the case may be, to a limited extent to their content, which have been submitted and are currently treated as under seal or/and *ex parte*. The Chamber is of the view that the present classification is required by the principle of fairness of proceedings for the Defence. Moreover, the Chamber considers that references in the present decision to documents under seal or/and *ex parte* have been kept to a minimum and are not inconsistent with the nature of the documents referred to.

I. Procedural History

A. Prosecutor’s Additional Applications for Redactions

4. On 31 July 2008 the Chamber issued the “Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties” (“Decision on

¹ ICC-01/05-01/08-126-US-Exp.

² ICC-01/05-01/08-164-US-Exp.

Disclosure”).³ The Chamber ordered, *inter alia*, that disclosure of evidence falling under rules 76 and 77 of the Rules of Evidence and Procedure (the “Rules”) be conducted as soon as possible and no later than 3 October 2008. The Chamber ordered the parties to submit any request under rules 81 and 82 of the Rules at the latest on 3 September 2008.

5. On 1 August 2008 the Prosecutor submitted the “Prosecutor’s Decision concerning the Prosecutor’s proposals for redactions”⁴ requesting redactions of information in the Prosecutor’s Application for Warrant of Arrest under Article 58”⁵ (the “Prosecutor’s Application”) and the “Prosecutor’s Submission on Further Information and Materials”⁶ (the “Prosecutor’s Further Submission”) and their respective annexes.⁷

6. On 31 August 2008, Judge Hans-Peter Kaul, acting as Single Judge on behalf of the Chamber,⁸ issued the “First decision on the Prosecutor’s request for redactions” (“First Decision on Redactions”) granting partially redactions of information contained in the Prosecutor’s Application and the Prosecutor’s Further Submission.⁹

7. On 30 September 2008 the Prosecutor submitted the “Prosecution’s Application for Proposed Summaries and Redactions Pursuant to Article 68(5) of the Rome Statute and Rules 81(2) and 81(4) of the Rules of Procedure and Evidence”¹⁰ informing the Chamber that he intended to rely upon eleven additional witnesses for the confirmation of charges hearing. He requested authorisation to redact the

³ ICC-01/05-01/08-55.

⁴ ICC-01/05-01/08-58-US-Exp.

⁵ ICC-01/05-01/08-26-US-Exp.

⁶ ICC-01/05-01/08-29-US-Exp.

⁷ These proposals for redactions have been partly re-submitted on 22 September 2008 (ICC-01/05-01/08-114-US-Exp) following a decision by the then Single Judge Fatoumata Dembele Diarra entitled “Décision relative à la Requête du Procureur aux fins d’expurgations pour les témoins 0009, 0033, 0038, 0022, 0023, 0029”, ICC-01/05-01/08-108-Conf.

⁸ ICC-01/05-01/08-53.

⁹ ICC-01/05-01/08-85-Conf.

¹⁰ ICC-01/05-01/08-126-US-Exp.

identity of four witnesses and to use summaries for two witnesses at this stage of the proceedings.

8. On 1 October 2008 the Chamber issued the “Second Decision on the Prosecutor’s request for redactions” (“Second Decision on Redactions”) granting partially redactions in the annexes to the Prosecutor’s Application and the Prosecutor’s Further Submission and ordering summaries with regard to two witness statements.¹¹

9. On 6 October 2008 the Chamber decided¹² to convene a status conference with the Prosecutor *ex parte* and *in camera* which was held on 8 October 2008 before the Chamber.¹³ During the hearing the Chamber ordered the Prosecutor to submit to the Chamber the risk assessment report with regard to those eleven witnesses by 10 October 2008. This report was duly submitted to the Chamber and to the Victims and Witnesses Unit (“VWU”).

10. On 17 October 2008 the Prosecutor submitted the “Prosecution’s Application for Proposed Redactions Pursuant to rules 81(2) and 81(4) of the Rules of Procedure and Evidence”¹⁴, informing the Chamber that he intended to rely upon yet another witness for the confirmation of charges and requesting redactions of information in this witness statement. The Prosecutor further submitted the “Prosecution’s Submission of Amended Document Containing the Charges and Amended List of Evidence”¹⁵.

¹¹ ICC-01/05-01/08-135-Conf.

¹² “Decision on the Scheduling of Two Status Conferences”, ICC-01/05-01/08-141-Conf.

¹³ ICC-01/05-01/08-T-7-CONF-EXP-ENG ET ; ICC-01/05-01/08-T-6-EXP-CONF-ENG ET.

¹⁴ ICC-01/05-01/08-164-US-Exp.

¹⁵ ICC-01/05-01/08-169 with Confidential Prosecution and Defence Only Annexes 2A, 2B, 2C and 2D and Public Annex 3A.

11. On the same day, the Chamber issued the "Décision relative au report de l'audience de confirmation des charges" and decided to postpone the date of the confirmation of charges hearing and to suspend the timetable for disclosure between the parties as established in its Decision on Disclosure.¹⁶

12. On 31 October 2008 the Chamber issued the "Décision fixant la date de l'audience de confirmation des charges" and decided to set the date of the hearing to confirm the charges from 8 to 12 December 2008 and established a new timetable for disclosure between the parties.¹⁷

13. On 3 November 2008 the Chamber issued the "Decision on the Security Situation of Witnesses"¹⁸ ordering the Prosecutor to report on the individual security situation of witnesses who had been granted anonymity or for whom anonymity had been requested.

14. On 5 November 2008 the Prosecutor submitted the "Prosecution's Submission of Additional Information Pursuant to 'Decision on the Security Situation of Witnesses'"¹⁹, informing the Chamber on the security situation of the witnesses as requested and the witnesses' possible consent that their identity be disclosed to the Defence in the proceedings leading to the confirmation of charges hearing.

¹⁶ ICC-01/05-01/08-170.

¹⁷ ICC-01/05-01/08-199.

¹⁸ ICC-01/05-01/08-202-US-Exp.

¹⁹ ICC-01/05-01/08-209-US-Exp.

B. Prosecutor's Request for Prohibition, Regulation and/or Setting of Conditions for Contact

15. On 31 August 2008 Judge Hans-Peter Kaul, acting as Single Judge on behalf of the Chamber,²⁰ issued the "First decision on the Prosecutor's request for redactions" ("First Decision on Redactions")²¹, in which he ordered the Registry to actively monitor regularly the non-privileged communication via telephone of Jean-Pierre Bemba Gombo, subject to review by the Chamber.

16. On 22 September 2008 the Chamber issued the "Decision on the Monitoring of Jean-Pierre Bemba Gombo's Non-Privileged Communications"²² and ordered the Registry to actively monitor the non-privileged telephone communications of Mr Jean-Pierre Bemba entailing a *post-factum* listening regime for incoming and outgoing telephone conversations. Furthermore, the Chamber ordered the Registry to report to it on the implementation of its decision.

17. On the same date, the Prosecutor applied in the "Prosecution's Amended Application for Proposed Redactions Pursuant to Rules 81(2) and 81(4)"²³ for the prohibition, regulation and/or setting of conditions for contact with a view to the disclosure of the witness statements dealt with in the Chamber's First and Second Decisions on Redactions.

18. On 30 September 2008 the Prosecutor applied anew for the prohibition, regulation and/or setting of conditions for contact between the detained person and any other person, with the exception of counsel, with a view to the disclosure of the eleven witness statements dealt with in this decision. The Chamber notes, however,

²⁰ ICC-01/05-01/08-53.

²¹ Pre-Trial Chamber III, ICC-01/05-01/08-85-Conf.

²² ICC-01/05-01/08-118-Conf-tENG.

²³ ICC-01/05-01/08-114-US-Exp.

that no such request was made with regard to the twelfth witness introduced on 17 October 2008.

19. On 1 October 2008 the Chamber issued the “Decision on the Prosecutor’s request for the regulation of contacts of Jean-Pierre Bemba Gombo”²⁴ rejecting the Prosecutor’s request submitted on 22 September 2008. This decision was based *inter alia* on the fact that the Chamber previously ruled that the Defence shall keep the information disclosed confidential and should not pass it on to the public.

20. On 27 October 2008, the Registry filed a report²⁵ concluding that “the Registrar has not identified direct threats to victims or witnesses. There is no clear information indicating that the disclosure of the witnesses’ identities to the Defence (1 October 2008) has triggered any reactions that could indicate the will to intimidate or harm witnesses. In particular, there is no information at this period of time that Mr Bemba has disclosed the names of witnesses to a third party.”

II. The Law

21. The Chamber notes articles 21, 57(3)(c), 61, 64(2), 67 and 68(1) of the Statute, rules 81(2), 81(4), 87 and 121 of the Rules, regulation 101 of the Regulations of the Court (the “Regulations”) and article 8 of the Code of Professional Conduct for counsel.

A. Prosecutor’s Additional Applications for Redactions

22. The Chamber notes that, pursuant to article 61(3) of the Statute, Jean-Pierre Bemba Gombo (“Mr Jean-Pierre Bemba”) shall be provided with a copy of the

²⁴ ICC-01/05-01/08-134-Conf.

²⁵ Registrar, Second Report of the Registrar on the results of the monitoring of the non-privileged communications of Mr. Jean-Pierre Bemba Gombo. ICC-01/05-01/08-191-US-Exp, para. 9.

document containing the charges on which the Prosecutor intends to bring him to trial and be informed of the evidence on which the Prosecutor intends to rely at the hearing. According to rule 121(3) of the Rules, the Prosecutor shall provide these documents to the Chamber and Mr Jean-Pierre Bemba, no later than 30 days before the date of the confirmation of charges hearing.

23. Where the Prosecutor intends to present new evidence at the hearing, he shall provide the Chamber and Mr Jean-Pierre Bemba, in accordance with rule 121(5) of the Rules, with a list of evidence no later than 15 days before the date of the hearing.

24. With respect to the requests for redactions, the Chamber wishes to recall the relevant law and principles as set out in its previous decisions and those of the Appeals Chamber which are to be applied in determining whether authorisation of the proposed redactions should be granted.²⁶ In particular, the Chamber points out that it applies the criteria in respect of non-disclosure and the methodology as established in its First and Second Decision on Redactions.²⁷ In assessing the Prosecutor's Additional Applications for Redactions, the Chamber is guided by the Appeals Chamber in its judgement of 13 May 2008,²⁸ in particular as set out in paragraphs 68 to 73, 98 and 99.

²⁶ Pre-Trial Chamber III, ICC-01/05-01/08-48-US-Exp; ICC-01/05-01/08-85-Conf; ICC-01/05-01/08-121-US-Exp; ICC-01/05-01/08-135-Conf; Appeals Chamber, "Judgement on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled 'Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81(2) and (4) of the Rules of Procedure and Evidence'", ICC-01/04-01/06-568; Appeals Chamber, "Judgement on the appeal of Mr Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled 'First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81'", ICC-01/04-01/06-773; Appeals Chamber, "Judgement on the appeal of Mr Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled 'Second Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81'", ICC-01/04-01/06-774; Appeals Chamber, "Judgement on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled 'First Decision on the Prosecution Request for Authorisation to Redact Witness Statements'", ICC-01/04-01/07-475; Appeals Chamber, "Judgement on the appeal of Mr Germain Katanga against the decision of Pre-Trial Chamber I entitled 'First Decision on the Prosecution Request for Authorisation to Redact Witness Statements'", ICC-01/04-01/07-476.

²⁷ Pre-Trial Chamber III, ICC-01/05-01/08-85-Conf, paras 10 to 18; ICC-01/05-01/08-135-Conf, paras 21 to 30.

²⁸ Appeals Chamber, ICC-01/04-01/07-475.

25. For the sake of clarity, the Chamber recalls once again the criteria in respect of non-disclosure of information pursuant to rules 81(2) and 81(4) of the Rules which comprise (i) the danger caused by disclosure of the identity persons to be protected and whether non-disclosure could reduce that danger; (ii) the “necessity” of non-disclosure in the sense that less intrusive protective measures are not available; and (iii) proportionality of non-disclosure in view of the prejudice caused thereby to the rights of the accused and a fair and impartial trial. The danger must involve an objectively justifiable risk to the safety of the person concerned and must arise from disclosing the particular information to the Defence, as opposed to the information to the public at large.

26. The Chamber reiterates that its principal responsibility related to redactions prior to the confirmation hearing is to ensure that the proceedings are fair and expeditious and that they are conducted with full respect for the rights of the Defence and with due regard to the protection of victims and witnesses.²⁹

27. As the Chamber has continuously emphasised, the overriding principle is that *full* disclosure should be made and that non-disclosure is an *exception* to this general rule which requires prior authorisation from the Chamber pursuant to rule 81 of the Rules.³⁰ Furthermore, any decision authorising non-disclosure of information will require a careful assessment by the Chamber on a case-by-case basis.³¹

28. Moreover, the Chamber recalls that the Appeals Chamber has held that “it may be permissible to withhold the disclosure of certain information from the defence

²⁹ Pre-Trial Chamber III, ICC-01/05-01/08-85-Conf, para. 12 and ICC-01/05-01/08-121-US-Exp, para.17.

³⁰ Pre-Trial Chamber III, ICC-01/05-01/08-85-Conf, para.13 and ICC-01/05-01/08-121-US-Exp, para. 18.

³¹ Pre-Trial Chamber III, ICC-01/05-01/08-85-Conf, para. 13 and ICC-01/05-01/08-121-US-Exp, para. 18.

prior to the hearing to confirm the charges that could not be withheld prior to trial".³²

29. Lastly, the Chamber highlights that, as held by the Appeals Chamber judgment of 13 May 2008, "it will be for the Prosecutor seeking redactions to establish that such redactions are warranted and, in particular, that disclosure of the information for which redactions are sought 'may prejudice further or ongoing investigations'".³³

B. Prosecutor's Request for Prohibition, Regulation and/or Setting of Conditions for Contact

30. The Chamber recalls that regulation 101 within Chapter 6 of the Regulations entitled "Detention matters" concerns restrictions to access to news and contact. Regulation 101(2) of the Regulations provides:

"The Prosecutor may request the Chamber seized of the case to prohibit, regulate or set conditions for contact between a detained person and any other person, with the exception of counsel, if the Prosecutor has reasonable grounds to believe that such contact:

- a) Is for the purposes of attempting to arrange the escape of a detained person from the detention centre;
- b) Could prejudice or otherwise affect the outcome of the proceedings against a detained person, or any other investigation;
- c) Could be harmful to a detained person or any other person;
- d) Could be used by a detained person to breach an order for non-disclosure made by a judge;
- e) Is against the interests of public safety; or
- f) Is a threat to the protection of the rights and freedom of any person."

31. The Chamber notes that regulation 101(3) of the Regulations further stipulates that:

"[t]he detained person shall be informed of the Prosecutor's request and shall be given opportunity to be heard or to submit his or her views. In exceptional circumstances such as in an emergency, an order may be made prior to the

³² Appeals Chamber, ICC-01/04-01/07-475, para. 68.

³³ Appeals Chamber, ICC-01/04-01/07-475, para. 97.

detained person being informed of the request. In such a case, the detained person shall, as soon as practicable, be informed and shall be given the opportunity to be heard or to submit his or her views.”

III. The Submissions

A. Prosecutor’s Additional Applications for Redactions

1. Filing of 30 September 2008

32. The Prosecutor informs the Chamber that he has continued his investigation in accordance with article 61(4) of the Statute and that he wishes to rely upon witnesses 0032, 0040, 0042, 0044, 0045, 0046, 0047, 0065, 0068, 0080 and 0081 at the confirmation of charges hearing.

33. He further submits that this application is brought pursuant to articles 61(5) and 68(5) of the Statute and rules 81(2) and 81(4) of the Rules. The Prosecutor incorporates by reference previous submissions with regard to the legal justification for the requested redactions provided on 22 September 2008.³⁴

34. The Prosecutor contends that the admission of those witness statements “would not prejudice Mr. Bemba’s right to fair trial especially due to the fact that the Prosecution has not yet filed its Document Containing the Charges”. He purports that these “witnesses are core witnesses necessary for the confirmation of charges hearing and related directly to the widespread and systematic nature of the MLC’s attacks on civilians”.³⁵

³⁴ See ICC-01/05-01/08-126-US-Exp, para. 35 referring to ICC-01/05-01/08-114-US-Exp, paras 16-23 (see footnote 5 above). Where appropriate, the previous submissions of the Prosecutor are reflected in the present decision.

³⁵ ICC-01/05-01/08-126-US-Exp, para. 15.

35. Having reviewed the personal circumstances of witnesses 0032, 0040, 0044, 0045 and 0046 and their anticipated evidence as well as the circumstances at hand, including the ongoing situation in the Central African Republic ("CAR"), the Prosecutor does not seek redactions in relation to the identity of those five witnesses.³⁶ With regard to witnesses 0042, 0068, 0080 and 0081 he still seeks authorisation to redact their identity and other identifying information.³⁷ As to the statements of witnesses 0047 and 0065, the Prosecutor suggests to rely on summaries pursuant to article 68(5) of the Statute.³⁸

36. He further submits that the four witnesses, whose identity is requested not to be revealed, may face repercussions once their names are disclosed to the Defence. He recalls Mr Jean-Pierre Bemba's past behaviour against opponents and the capability of his large number of supporters to threaten and intimidate persons and organise public unrest in the Democratic Republic of the Congo ("DRC"), in the CAR and in other countries as far as in Europe. He contends that eight persons have been threatened in the DRC and the CAR because of their supposed association with the ICC investigation in relation to Mr Jean-Pierre Bemba; upon news of his arrest, supporters of the Mouvement de Libération du Congo ("MLC") have been mobilized to attack MONUC and one NGO compound but have also organised targeted demonstrations in Belgium. The new phase of proceedings, the Prosecutor continues, can objectively trigger other forms of reaction. He concludes that this is of relevance to the four witnesses.³⁹

37. Finally, the Prosecutor seeks that the redactions continue past the confirmation hearing.⁴⁰

³⁶ *Ibid.*, para. 18.

³⁷ *Ibid.*, para. 19.

³⁸ *Ibid.*, para. 21.

³⁹ *Ibid.*, para. 24.

⁴⁰ *Ibid.*, para. 35.

2. Filing of 17 October 2008

38. The Prosecutor submits that further to his continued investigation pursuant to article 61(4) of the Statute he intends to present the statement of the additional witness 0087 at the confirmation of charges hearing. With regard to the Prosecutor's application for redactions, the Prosecutor alluded to rule 121(5) of the Rules noting that where he intended to present new evidence at the hearing, he shall provide the Pre-Trial Chamber and the person with a list of that evidence no later than 15 days before the date of the hearing.⁴¹

3. Filing of 5 November 2008

39. The Prosecutor informs the Chamber that witnesses 0022, 0023, 0029, 0042, 0068, 0080 and 0087 agreed that their identity be shared with the Defence in the proceedings leading to the confirmation of charges hearing. He further provides an updated individual security risk assessment on which the Chamber relies in its assessment for the purposes of this decision.

40. He nevertheless submits that non-disclosure of their identities would continue to protect the above mentioned witnesses. He contends that revealing the names of those witnesses will lead to a foreseeable risk of acts of intimidation and of violence for the reasons that eight persons suspected of supporting the investigation and prosecution in the DRC and CAR have been threatened or assaulted by supporters of Jean-Pierre Bemba as well as those of Mr Patassé since the arrest of Jean-Pierre Bemba; and that supporters of Jean-Pierre Bemba have used violence in the DRC and in Europe after his arrest during public demonstrations, including attacking MONUC and staff residence and an NGO-building. He continues to submit that, even if those instructions did not come from Jean-Pierre Bemba directly, his supporters might act on their own initiative as soon as they know the identity of the witnesses.

⁴¹ ICC-01/05-01/08-164-US-Exp, paras 20 and 21.

B. Prosecutor's Request for Prohibition, Regulation and/or Setting of Conditions for Contact

41. In his filing of 30 September 2008 the Prosecutor requests once again⁴² that the following measures be ordered by the Chamber:

"(c) (...) that there be no dissemination of names of any of the five witnesses for which the prosecution is not seeking redactions in relation to the identity beyond the Defence team and that the Defence team be required to maintain a log of contact of anyone to whom they may disclose the identity and, should the PTC not authorize the redactions to the identity of any of the four crime-based witnesses, to make a similar order in relation to them and that the order commence as of disclosure of that information to the Defence;

(d) (...) that the defendant not disclose the names of the five witnesses for which the Prosecution is not seeking redactions in relation to the identity and should the PTC not authorize the redactions to the identity of any of the four-crime-based witnesses, make a similar order in relation to them and that the order commence as of disclosure of that information to the Defence;

(e) (...) that no attempt be made by the Defence team to contact directly or indirectly any of the non-redacted witnesses except through the Office of the Prosecutor, should the witness consent to such contact; and

(f) (...) under Regulation 101(2)(b), (c), (d), (e), and/or (f) that the defendant have no contact directly or indirectly with any of the five witnesses for which the prosecution is not seeking redactions to the identity and, should the PTC not authorize the redactions to the identity of any of the four crime-based witnesses, the Prosecution seeks a similar order in relation to those other witnesses."⁴³

42. In substantiating his request, the Prosecutor submits that, given the pending request on the monitoring of Mr Jean-Pierre Bemba's non-privileged communications, regulation 101 of the Regulations is applicable for a non-contact order to the effect that Mr Jean-Pierre Bemba "is to have no contact directly or indirectly with the witnesses whose names will be disclosed to the Defence as part of this Chamber's redaction decision".⁴⁴

⁴² A similar request has been made on 22 September 2008 which was rejected by the Chamber, see paragraphs 17 and 19 above.

⁴³ ICC-01/05-01/08-126-US-Exp, pp. 14-15.

⁴⁴ ICC-01/05-01/08-126-US-Exp, para. 37.

43. In the filing of 17 October 2008 introducing the additional twelfth witness no such request was made.

IV. Conclusions of the Chamber with regard to the Prosecutor's Additional Applications for Redactions

A. Legal basis to admit additional witness statements

44. The Chamber notes that the Prosecutor's Additional Applications for Redactions with respect to twelve witnesses were submitted to the Chamber on 30 September 2008 and 17 October 2008 respectively.

45. The Chamber also notes that when the Prosecutor submitted eleven additional witness statements accompanied by requests for redactions on 30 September 2008, no reference was made to the legal basis for proceeding as such. In his written submission, the Prosecutor invoked articles 61(5) and 68(5) of the Statute as his legal basis. As to the twelfth additional witness statement submitted on 17 October 2007, the Prosecutor alluded to rule 121(5) of the Rules.

46. The Chamber does not concur with the legal basis outlined in the Prosecutor's submission and considers that in light of the new timetable for disclosure set out in its decision of 31 October 2008, the evidence to be disclosed falls within the parameters of rule 121(3) of the Rules. Accordingly, disclosure shall take place no later than 7 November 2008.

B. Prosecutor's Additional Applications for Redactions

1. Introductory remarks

47. The Chamber bases its findings on the information provided by the Prosecutor in his filings of 30 September, 17 October and 5 November 2008 and on the oral submissions during the status conference held on 8 October 2008. The Chamber also takes into account previous submissions by the VWU in this case.⁴⁵ Albeit the VWU has not been requested to submit its observations with regard to these additional twelve witnesses, the Chamber considers that, due to the fact that since the issuance of the First Decision on Redactions the security situation in the CAR has not changed to date, the previous submissions of the VWU are equally applicable to the witness statements under examination.

48. Further, the Chamber notes that the Prosecutor seeks authorisation for non-disclosure of the identity and identifying information of five over twelve witnesses. Against this background, the Chamber will only consider redactions to the disclosure of the identity of those five witnesses, namely witnesses 0042, 0068, 0080, 0081 and 0087. The Chamber's analysis of the individual security assessment of all twelve witnesses will be provided separately in the annex to this decision filed confidential *ex parte* to the Prosecutor only.

49. The Chamber emphasizes that the burden of providing necessary information for the Chamber to conduct the analysis as required by the Appeals Chamber lies with the Prosecutor. In light of the Chamber's previous decisions on redactions, in those cases where the Chamber lacks precise and a case-specific justification in the tables provided by the Prosecutor, the Chamber rejects the request for redactions *in limine*.

⁴⁵ ICC-01/05-01/08-72-US-Exp; ICC-01/05-01/08-T-4-CONF-EXP-ENG ET 28-08-2008.

2. The danger caused by disclosure of the identity of the witnesses

50. The Chamber wishes to recall the definition of “danger” as set out in the First Decision on Redactions upon which the Chamber bases its determinations. It is recalled that a danger must involve an objectively justifiable risk to the safety of the person concerned. The source of the risk can be defined as an organisation or an individual acting with malicious intent seeking to harm, kill or otherwise negatively influence a witness in order to have an adverse impact on the proceedings before the Court, or retaliate against a witness.⁴⁶

51. The Chamber equally recalls that the danger caused by disclosure of the witness’s identity to the Defence must be assessed with regard to each individual witness taking into account his or her specific situation. Following the methodology already set out in the First Decision on Redactions, the Chamber notes that particular weight should be given (i) to the witness’s personal circumstances, (ii) to the fact whether the witness concerned benefits from any protection or security measures, (iii) to the fact whether the witness has faced threats originating from Mr Jean-Pierre Bemba or his supporters and (iv) to the fact whether the witness himself has undertaken any activities to endanger his or her personal safety.⁴⁷

3. Redactions under rule 81(4) of the Rules

52. The Prosecutor requests authorisation to redact information pursuant to rule 81(4) of the Rules which can be classified into the following four categories:

- (i) Names and identifying information of witnesses;
- (ii) Names and identifying information of family members of witnesses; and
- (iii) Names and identifying information of persons at risk on account of the activities of the Court;

⁴⁶ ICC-01/05-01/08-85-Conf, para. 29.

⁴⁷ ICC-01/05-01/08-85-Conf, para. 30.

- (iv) Names and identifying information of other protected witnesses.

53. The Chamber is aware of the pre-trial nature of proceedings in which redactions are sought and mindful of the possibility to withhold the disclosure of certain information from the Defence prior to the hearing to confirm the charges that could not be withheld prior to trial.⁴⁸ The Chamber carried out its assessment of the Prosecutor's requests for redactions bearing in mind its duty to equally protect victims and witnesses and to safeguard the rights of the Defence. In particular, the Chamber is guided by the fact that the Defence has effective access to the substantial information in the witness statements, that the redactions are not prejudicial to or inconsistent with the rights of Mr Jean-Pierre Bemba and a fair and impartial trial and that any shortcoming of procedural rights towards the Defence will be adequately counterbalanced within the context of the evaluation of the evidence.

(a) Names and identifying information of witnesses 0042, 0068, 0080 and 0087

54. The Prosecutor requests authorisation pursuant to rule 81(4) of the Rules to redact the names and any identifying information of the witnesses mentioned above. It is recalled that the Chamber has asked the Prosecutor to continuously assess the risk to the safety and well-being of witnesses for whom anonymity has been granted, and to immediately inform the Chamber of any changes in their current security situation in order for the Chamber to be in a position to reconsider its decision on redactions.⁴⁹ In this respect the Chamber observes that the information provided by the Prosecutor remains standardised and lacks any further details.

55. Taking into consideration the information submitted on 5 November 2008 and the criteria established in respect of non-disclosure of information pursuant to rule 81(4) of the Rules as set out in the First and Second Decision on Redactions, the

⁴⁸ Appeals Chamber, ICC-01/04-01/07-475, para. 68.

⁴⁹ Pre-Trial Chamber III, ICC-01/05-01/08-135-Conf, para. 55 and letter (e) of the operative part, p. 29.

Chamber is of the view that disclosing the identity of witnesses 0042, 0068, 0080 and 0087 at this stage of the proceedings does not pose an objectively justifiable risk to their safety for the reasons summarized below.

(α) Witness 0042

56. When giving his statement, he has expressed his wish and willingness to come to the Court and testify in person.⁵⁰ He has not received any threats so far [REDACTED]. Furthermore, as recently as 5 November 2008, witness 0042 has consented that his identity be disclosed to the Defence. Thus, the Chamber finds that disclosure of the witness's identity to the Defence would not pose him at an objectively justifiable risk.

(β) Witness 0068 and witness 0080

57. She has not received any threats so far [REDACTED]. Furthermore, as recently as 5 November 2008, witness 0068 has consented that her identity be disclosed to the Defence. Thus, the Chamber finds that disclosure of the witness's identity to the Defence would not pose her at an objectively justifiable risk.

(γ) Witness 0087

58. She has not received any threats so far [REDACTED]. Furthermore, as recently as 5 November 2008, witness 0087 has consented that her identity be disclosed to the Defence. Thus, the Chamber finds that disclosure of the witness's identity to the Defence would not pose her at an objectively justifiable risk.

59. The Chamber is also concerned with the rights of the Defence when dealing with the requested redactions. The fact that the Defence is aware of the identity of those

⁵⁰ ICC-01/05-01/08-126-US-Exp-AnxG-2-1, pp. 7 and 9.

witnesses who form the core evidence of this case, providing information on the crimes of which Mr Jean-Pierre Bemba is charged with, should put it in a position to properly prepare for the proceedings leading to the confirmation of charges hearing.

(b) Name and identifying information of witness 0081

60. The Prosecutor requests authorisation pursuant to rule 81(4) of the Rules to redact the name and any identifying information of witness 0081. Taking into consideration the criteria established in respect of non-disclosure of information pursuant to rule 81(4) of the Rules and following the methodology of assessment established by the Chamber's First and Second Decision on Redactions, the Chamber is of the view that the identity of witness 0081 at this stage of the proceedings poses an objectively justifiable risk to his/her safety for the reasons summarised below.

61. The Chamber accepts the Prosecutor's information which allows it to conclude that the name and identifying information of the aforementioned witness should be redacted. The Chamber bases its decision also on the fact that the witness has expressly denied his/her consent that his/her identity be disclosed to the Defence.

62. The Chamber recalls that those redactions would minimise the risk and that at this stage of the proceedings, there is no less intrusive alternative measure than the requested redactions that can be taken to achieve the goal of protection, [REDACTED]. Furthermore, the Chamber considers that disclosing the name and identifying information of this witness could likely expose him/her to greater risk of being threatened and re-victimized. The Chamber believes that re-location to a secure place is a too intrusive measure, bearing in mind its enormous impact on the

life of the witness and the fact that the Prosecutor declared that he does not intend to call witnesses to testify in Court at the confirmation of charges hearing.⁵¹

63. Mindful of the respect of the rights of the Defence, the Chamber ensures that the granted redactions are strictly limited to what is necessary to guarantee the safety of witness 0081 and are adequate to minimise the risk. The Chamber ensures that the Defence is still being provided with the substance of the witness statement necessary to prepare for the confirmation of charges hearing.

64. As was ordered in the Second Decision on Redactions, the Prosecutor shall continuously assess the risk to the safety and well-being of witness 0081 and immediately inform the Chamber of any changes in the current security situation, [REDACTED], in order for the Chamber to be in a position to reconsider its decision on redactions.

65. Finally, the Chamber considers that the redactions of the name and identifying information contained in the statement of witness 0081 as requested by the Prosecutor would not result in the hearing to confirm the charges, viewed as a whole, to be unfair to the suspect.⁵²

(c) Names and identifying information of family members of witnesses

66. The Prosecutor requests authorisation pursuant to rule 81(4) of the Rules to redact the names and any identifying information of family members of all twelve witnesses. The Prosecutor further requests authorisation pursuant to rule 81(4) of the

⁵¹ ICC-01/05-01/08-T-5-CONF-ECP-ENG ET, p. 11, lines 20-22 : « For the time being the Prosecutor does not intend to call any witness for the confirmation hearing.”

⁵² Appeals Chamber, ICC-01/04-01/07-475, para. 72.

Rules to redact the whereabouts or the information that could lead to the identification of the whereabouts of family members of the witnesses.

67. The Chamber accepts that information about the whereabouts of family members may lead to their identification. Therefore, the redactions sought for this particular information will be examined in the present sub-section.

68. The Chamber attaches particular importance to the fact that the family members of the witnesses concerned are not involved in the Court's activities and may even ignore that a member of their family cooperated with the Court. Moreover, the Chamber notes that, [REDACTED].⁵³

69. Thus, the Chamber is of the view that disclosing the names and identifying information of family members of all witnesses poses an objectively justifiable risk to their safety.

70. Additionally, the Chamber considers that the requested redactions are strictly limited to what is necessary to ensure the safety of family members of all witnesses. It considers that the redactions are adequate to minimise the risk they might face and that, at this stage, there is no less intrusive alternative measure that can be taken to achieve the goal of protection.

71. Furthermore, in the view of the Chamber the redaction of this information will not result in the hearing to confirm the charges, viewed as a whole, to be unfair to the suspect⁵⁴ insofar as the Defence will still have access to the substantial

⁵³ [REDACTED]

⁵⁴ Appeals Chamber, ICC-01/04-01/07-475, para. 72.

information contained in the witness statements and have the possibility to challenge them.

72. For these reasons, the Chamber grants pursuant to rule 81(4) of the Rules authorisation to redact the names and identifying information of the family members of all twelve witnesses as detailed in the Annex to this decision.

(d) Names and identifying information of persons at risk on account of the activities of the Court

73. The Prosecutor requests pursuant to rule 81(4) of the Rules authorisation to redact from the witness statement the names and any identifying information of persons who are not witnesses, victims or members of their families on the basis that such persons “could be erroneously perceived as prosecution sources or witnesses”.⁵⁵

74. The Chamber notes that the Prosecutor justifies most of his requests concerning the names and any identifying information of individuals allegedly falling under this category with the following two arguments: (i) “they possess knowledge incriminating the suspect” or (ii) “they themselves were the subject of the suspect’s bad behaviour”.⁵⁶

75. The Chamber wishes to clarify that it will assess those requests for redactions on a case-by-case basis. Depending on the context in the witness statement, only in those cases where the information concerned reveals identifying information of those persons at risk on account of the activities of the Court, does the Chamber

⁵⁵ ICC-01/05-01/08-114-US-Exp, paras 17-22.

⁵⁶ ICC-01/05-01/08-126-US-Exp, para. 35 referring to previous submissions in ICC-01/05-01/08-114-US-Exp, para. 19.

authorise the proposed redactions. Whenever the Prosecutor fails to provide adequate justification or in those case where it cannot be inferred from the context in the statement that the person referred to will be “perceived as prosecution sources or witness”, the Chamber does not authorise the redaction of information.

76. The Chamber observes that the persons considered by the Prosecutor to be at risk on account of the activities of the Court are in fact either alleged victims of the crimes referred to in the amended document containing the charges⁵⁷ or members of the MLC, members of the CAR government or other persons who have witnessed events referred to in the statements.

77. The Chamber considers that, in case of disclosure of their names and identifying information, those alleged victims and those who “possess knowledge incriminating the suspect” may be put at risk by being perceived as potential witnesses or collaborators with the Court. The Chamber accepts that they may face threats and retaliation by supporters of Mr Jean-Pierre Bemba. Therefore, whenever adequately supported by facts, the Chamber is of the view that there is an objectively justifiable risk to the security of the aforementioned individuals if their names and any identifying information are disclosed to the Defence.

78. In addition, the redactions of the names and identifying information of those individuals are strictly limited to what is necessary to ensure the safety of those persons at risk on account of the activities of the Court. The Chamber considers that, whenever adequately supported by facts, those redactions would minimise this risk and that at this stage of the proceedings, there is no less intrusive alternative measure that can be taken to achieve the goal of protection.

⁵⁷ ICC-01/05-01/08-169-Anx3A.

79. With regard to this specific category of individuals whose names and identifying information is redacted, the Chamber is aware that the Defence may have an interest in contacting them in order to challenge their version of the events. Therefore, the Chamber has the duty to carefully examine each request for redactions adequately supported by the necessary information on a case-by-case basis as detailed in the Annex of this decision. The Chamber thus ensures that the Defence has access to the substantial elements contained in the witnesses' statements.

80. However, in balancing the interests of the Defence and the prejudice that might be caused to it against the rights of those individuals to be protected, the Chamber concludes that, in light of the limited scope of the confirmation hearing, the few redactions which are strictly limited to their names and identifying information would not result in the hearing to confirm the charges, viewed as a whole, to be unfair to the suspect.⁵⁸

81. For these reasons, the Chamber only grants authorisation for redactions pursuant to rule 81(4) of the Rules, when adequately supported by facts, of the names and identifying information of persons at risk on account of the activities of the Court as detailed in the Annex to this decision.

(e) Names and identifying information of other protected witnesses

82. The Prosecutor has requested to redact the names or identifying information of those witnesses for which anonymity has been granted by the Chamber in its First and Second Decision on Redactions. For protection and consistency purposes, the Chamber authorises those redactions without re-examining the requests anew, unless their anonymity has been lifted in the present decision.

⁵⁸ Appeals Chamber, ICC-01/04-01/07-475, para. 72.

4. Redactions under rule 81(2) of the Rules

83. As previously stated by the Chamber, the Prosecutor requests authorisation to redact information pursuant to rule 81(2) of the Rules. These requests for redactions can be classified into the following four categories:

- (i) Names and identifying information of potential prosecution witnesses;⁵⁹
- (ii) Identifying information of persons present at the interviews with the witnesses;
- (iii) Locations of interviews; and
- (iv) Under seal information relating to ongoing investigations

(a) Names and identifying information of potential prosecution witnesses

84. The Prosecutor requests, pursuant to rule 81(2) of the Rules, authorisation to redact information that could lead to the identification of individuals that the Prosecutor has interviewed or “seeks to interview in the foreseeable future”.

85. The Chamber considers that, in case of disclosure of their names and identifying information of the persons who have been interviewed or will be interviewed, the investigations of the Prosecutor may be prejudiced as these persons could be perceived as potential witnesses or collaborators with the Court. The Chamber considers that they may face threats and retaliation by the supporters of Mr Jean-Pierre Bemba which may compromise the ongoing and further investigation of the Prosecutor. The Chamber considers that the requested redactions are adequate to

⁵⁹ Appeals Chamber, ICC-01/04-01/07-476, para. 2: “The Appeals Chamber has defined potential prosecution witnesses as those individuals to whom reference is made in the statements of actual witnesses upon whom the Prosecutor wishes to rely at the confirmation hearing. They are individuals who have been interviewed by the prosecutor or who the prosecutor intends to interview in the near future, but in relation to whom the Prosecutor has not yet decided whether they will become prosecution witnesses”.

minimise this risk and are limited to what is strictly necessary to overcome any risk of prejudice to the ongoing and further investigation of the Prosecutor. The Chamber is also of the view that, at this stage of the proceedings, there is no less intrusive alternative measure that can be taken to prevent any prejudice to the ongoing or further investigation by the Prosecutor, and that authorising those redactions would not result in the hearing to confirm the charges, viewed as a whole, to be unfair to the suspect.

86. For those instances where the Prosecutor's requests for redactions are to be examined, the Chamber carefully assesses on a case-by-case basis the justification provided by the Prosecutor for seeking redactions and will provide in the Annex to this decision further details applying the principles set forth in this decision, mindful of the Appeals Chamber's guidance.

87. In instances where the Prosecutor fails to provide appropriate justification for his requests for redactions, the Chamber rejects the request for redactions *in limine*.

(b) Identifying information of persons present at the interviews with the witnesses

88. The Prosecutor requests authorisation to redact, pursuant to rule 81(2) of the Rules, the references to the names, signature, initials and functions of persons present during the interviews who assisted in the process of taking the statements of the witnesses, [REDACTED].

89. [REDACTED]⁶⁰ [REDACTED].⁶¹

⁶⁰ [REDACTED]

⁶¹ [REDACTED]

90. [REDACTED].

91. Moreover, the Chamber considers that the requested redactions are adequate to minimise this risk and are limited to what is strictly necessary to overcome any risk of prejudice to the ongoing and further investigation of the Prosecutor. The Chamber is also of the view that, at this stage of the proceedings, there is no less intrusive alternative measure that can be taken to achieve the goal of protecting ongoing or further investigation by the Prosecutor, and that authorising those redactions would not result in the hearing to confirm the charges, viewed as a whole, to be unfair to the suspect.

92. [REDACTED]

93. However, with regard to the Prosecutor's requests to redact the functions of those persons, [REDACTED], the Chamber considers that the redaction of this particular information is not necessary as the disclosure of this information [REDACTED] would not lead to the identification of the person concerned. In addition, the Chamber notes the many inconsistencies in the Prosecutor's requests: while in some statements those functions are proposed to be redacted, in other statements the Prosecutor does not seek redactions.

94. Therefore, the Chamber rejects the requests to redact the function of those persons who assisted in the process of taking the statements of the witnesses.

(c) Location of interviews

95. In some instances, the Prosecutor requests authorisation to redact, pursuant to rule 81(2) of the Rules, [REDACTED] as locations where the interviews occurred.

96. The Chamber wishes to refer to its findings in the Second Decision on Redactions⁶², whereby it denied authorisation for the redaction of the references to [REDACTED]. However, the Chamber adjusts this approach in those cases where a more specific interview location [REDACTED] can easily be identified.

(d) Under seal information relating to ongoing investigations

97. The Prosecutor also requests that information which is currently treated under seal relating to ongoing investigations be redacted. The Chamber accepts that disclosing information relating to ongoing investigative activities of the Prosecutor will prejudice his investigations and must therefore be redacted. The Chamber considers that the requested redactions are adequate to minimise the risk of prejudice to the ongoing investigations by the Prosecutor. The Chamber is also of the view that, at this stage of the proceedings, there is no less alternative measure that can be taken to achieve the goal of protecting ongoing or further investigations by the Prosecutor, and that authorising those redactions would not result in the hearing to confirm that charges, viewed as a whole, to be unfair to the suspect.

5. Summaries of statements of witnesses 0047 and 0065

98. With respect to witness 0047 and witness 0065 the Chamber accepts the Prosecutor's proposal⁶³ to present summaries of their statements in accordance with article 61(5) of the Statute.⁶⁴ The Chamber recalls once again that it is the duty of the Prosecutor to ensure that the summaries contain all information relevant to the case.

⁶² Pre-Trial Chamber III, ICC-01/05-01/08-135, paras 90-94.

⁶³ ICC-01/05-01/08-126-US-Exp, para. 32.

⁶⁴ See also Appeals Chamber, "Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of the Pre-Trial Chamber I entitled 'First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81'", ICC-01/04-01/06-773, para. 50.

and all potentially exculpatory information which may be contained in the statement.⁶⁵

C. Statements of witnesses 0022, 0023 and 0029

99. The Chamber has received on 5 November 2008 updated information with regard to witnesses 0022, 0023 and 0029 for whom anonymity had been granted by the Chamber in its First Decision on Redactions dated 31 August 2008.

100. In light of the new circumstances relating to their security situation the Chamber deems it appropriate to reconsider its decision with regard to the granting of anonymity to the witnesses concerned.

1. Witness 0022

101. She has not received any threats so far [REDACTED]. In its Second Decision on Redactions, the Chamber had ordered *proprio motu* the redaction of certain information that, in the view of the Chamber, is identifying information leading to the identification of the witness. This information has been inadvertently revealed to the Defence. However, no incident followed which could indicate that the witness is exposed to intimidation or threats. Furthermore, as recently as 5 November 2008, witness 0022 has consented to the possibility that her identity be disclosed to the Defence. Thus, the Chamber finds that disclosure of the witness's identity to the Defence would not pose her at an objectively justifiable risk.

2. Witness 0023

102. He has not received any threats so far [REDACTED]. Furthermore, as recently as 5 November 2008, witness 0023 has consented to the possibility that his identity

⁶⁵ ICC-01/04-01/07-644.

be disclosed to the Defence. Thus, the Chamber finds that disclosure of the witness's identity to the Defence would not pose him at an objectively justifiable risk.

3. Witness 0029

103. She has not received any threats so far [REDACTED]. In addition, even though the Chamber had granted anonymity to this witness in its Second Decision on Redactions, her name was inadvertently revealed to the Defence. However, no incident followed which could indicate that the witness is exposed to intimidation or threats. Furthermore, as recently as 5 November 2008, witness 0029 has consented to the possibility that her identity be disclosed to the Defence. Thus, the Chamber finds that disclosure of the witness's identity to the Defence would not pose her at an objectively justifiable risk.

104. Therefore, the Chamber considers that the statements of those witnesses shall be re-disclosed to the Defence revealing the names and identifying information of those witnesses. The other redactions remain unaffected by this decision.

V. Conclusions of the Chamber with regard to the Prosecutor's Request for Prohibition, Regulation and/or Setting of Conditions for Contact

105. The Chamber first notes that the Prosecutor had presented a similar request on 22 September 2008⁶⁶ which had been rejected by the Chamber by decision of 1 October 2008.⁶⁷

106. The Chamber observes again that the Prosecutor presents only one legal basis, namely regulation 101 of the Regulations to substantiate his requests. Further, with

⁶⁶ ICC-01/05-01/08-114-US-Exp, paras 31-33.

⁶⁷ ICC-01/05-01/08-134-Conf.

regard to the requests enumerated in letters (c) to (f), the Prosecutor did not provide any reasoning or facts to substantiate these additional requests.

107. Considering that the Prosecutor does not provide any reasoning or facts to support his request and that the Chamber has not been informed of any change in circumstances of the case and in light of the Chamber's previous findings in its decision of 2 October 2008, the Chamber thus finds that the Prosecutor's request for prohibition, regulation and/or setting of conditions for contact is without merit with regard to witness protection.

FOR THESE REASONS, THE CHAMBER

(a) decides to partially grant the Prosecutor's requests for redactions to the witness statements and related documents concerning witnesses 0032, 0040, 0042, 0044, 0045, 0046, 0068, 0080, 0081 and 0087 as specified in the present decision and its Annex;

(b) orders the Prosecutor, by no later than Friday 7 November 2008, to:

- (i) disclose to the Defence of Jean-Pierre Bemba Gombo the above-mentioned statements and related documents concerning witnesses 0032, 0040, 0042, 0044, 0045, 0046, 0068, 0080, 0081 and 0087 with the redactions as granted in the Annex to this decision;
- (ii) file in the record of the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, the statements and related documents concerning witnesses 0032, 0040, 0042, 0044, 0045, 0046, 0068, 0080, 0081 and 0087 in conformity with the Chamber's decision of 31 October 2008 (ICC-01/05-01/08-199);
- (iii) re-disclose to the Defence of Jean-Pierre Bemba Gombo the statements and related documents concerning witnesses 0022, 0023 and 0029 revealing

their names and identifying information as specified in the present decision;

- (iv) file in the record of the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, the statements and related documents concerning witnesses 0022, 0023 and 0029 in conformity with the Chamber's decision of 31 October 2008 (ICC-01/05-01/08-199);

(c) orders the Prosecutor to prepare a summary of the statements of witness 0047 and witness 0065, to disclose them to the Defence of Jean-Pierre Bemba Gombo and to file them in the record of the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* by no later than Friday, 7 November 2008 in conformity with the Chamber's decision of 31 October 2008 (ICC-01/05-01/08-199);

(d) orders the Prosecutor to immediately inform all witnesses concerned about the disclosure of their identities to the Defence, who have not been informed yet;

(e) orders the Prosecutor to continuously assess the risk to the safety and well-being of witnesses 0033, 0038, 0081, 0047 and 0065 and to immediately inform the Chamber of any changes in the current security situation of any of the aforementioned witnesses;

(f) rejects the Prosecutor's request for prohibition, regulation and/or setting of conditions for contact with regard to witness protection;

(g) orders the Defence and Jean-Pierre Bemba Gombo to keep the information disclosed confidential and to ensure that it is not passed on to the public.

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

Judge Ekaterina Trendafilova
Presiding Judge

Judge Hans-Peter Kaul

Judge Mauro Politi

Dated this Thursday, 6 November 2008

At The Hague, The Netherlands