

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 10 February 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 Request of the Office of Public Counsel for
Victims for Additional Redactions submitted on 30 September 2009."
(ICC-01/05-01/08-616-Conf-Exp)**

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 Liriss

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

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

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 Office of the Public Counsel for Victims' Request for Further Redactions.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 it, *inter alia*, decided to re-classify as public 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 Filing of Public Redacted Versions of Documents No. ICC-01/05-01/08-146-Conf-Exp, No. ICC-01/05-01/08-152-Conf-Exp, No. ICC-01/05-01/08-234-Conf-Exp, No. ICC-01/05-01/08-240-Conf-Exp, No. ICC-01/05-01/08-265-Conf-Exp and Request for additional redactions to document No. ICC-01/05-01/08-255-Conf-Exp, 30 September 2009, ICC-01/05-01/08-539.

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 a number of documents submitted by the Office of Public Counsel for Victims ("OPCV") with the redactions that are set out in Annex 3 of the Decision,⁷ which she requested the OPCV to re-file.
5. On 30 September 2009, the OPCV filed public, redacted versions of these documents, together with a request for additional redactions⁸ to document ICC-01/05-01/08-255-Conf-Exp⁹ (see confidential, *ex parte* Annex F)¹⁰ suggesting that some information contained therein, if revealed to the public, could endanger individuals whom the Court has an obligation to protect.¹¹

II. Relevant Provisions

6. 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 ICC-01/05-01/08-528, paragraph 15.

⁷ Annex 3 to Decision on Re-Classification and Unsealing of Certain Documents and Decisions, 18 September 2009, ICC-01/05-01/08-528-Conf-Exp-Anx3.

⁸ ICC-01/05-01/08-539, paragraph 4.

⁹ Informations supplémentaires concernant la demande de participation du demandeur a/0455/08; a/0456/08; a/0457/08; a/0458/08; a/0459/08; a/0460/08; a/0461/08; a/0462/08; a/0463/08; a/0464/08; a/0465/08; a/0466/08; a/0467/08, 17 November 2008, ICC-01/05-01/08-255-Conf-Exp.

¹⁰ Annex F to Filing of Public Redacted Versions of Documents No. ICC-01/05-01/08-146-Conf-Exp, No. ICC-01/05-01/08-152-Conf-Exp, No. ICC-01/05-01/08-234-Conf-Exp, No. ICC-01/05-01/08-240-Conf-Exp, No. ICC-01/05-01/08-265-Conf-Exp and Request for additional redactions to document No. ICC-01/05-01/08-255-Conf-Exp, 30 September 2009, ICC-01/05-01/08-539-Conf-Exp-AnxF.

¹¹ ICC-01/05-01/08-539, paragraph 4.

[...]

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

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.

[...]

3. Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.

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.

Rule 89 of the Rules

Application for participation of victims in the proceedings

1. In order to present their views and concerns, victims shall make written application to the Registrar, who shall transmit the application to the relevant Chamber. Subject to the provisions of the Statute, in particular article 68, paragraph 1, the Registrar shall provide a copy of the application to the Prosecutor and the defence, who shall be entitled to reply within a time limit to be set by the Chamber. Subject to the provisions of sub-rule 2, the Chamber shall then specify the proceedings and manner in which participation is considered appropriate, which may include making opening and closing statements.

[...]

Regulation 99 of the Regulations of the Registry

Assessment of the disclosure of information

1. Upon receipt of an application from a victim and pending any decision by the Chamber, the Registry shall review the application and assess whether the disclosure to the Prosecutor, the defence and/or other participants of any information contained in such an application, may jeopardise the safety and security of the victim concerned.

[...]

III. Analysis and Conclusions

7. Certain background matters are relevant to this Request. First, the proposed redactions to the applications to participate and to the additional information have been suggested by the Victims Participation and Reparations Section

("VPRS"), together with the Victims and Witness Unit ("VWU"), following a request from the Pre-Trial Chamber.¹²

8. Second, in its Decision of 17 November 2008, Pre-Trial Chamber III observed that the redactions applied to the application forms and disclosed to the defence were, in part, the result of the authority and influence that Mr Bemba was said to exercise, as President of the Mouvement de Libération du Congo, with the risk that the applicants may be identified and contacted. The personal situation of the victims had been taken into account, for instance if they were not protected by the Court or the (local) government, as had the wish of most of the applicants that their identity and other identifying information are not revealed to the Office of the Prosecutor ("prosecution"), the defence, other participants and the public.¹³ Moreover, in authorising the redactions, the Pre-Trial Chamber concluded that they did not exceed what was strictly necessary.¹⁴
9. As analysed hereafter, the preponderance of the information the OPCV seeks to redact is already known to the parties, save as regards the status of the son of a/0455/08 as a witness for the prosecution, [REDACTED].
10. Further, the Trial Chamber observes that it has not received detailed information as to the individual security situation of the individuals who are the subject of this request, although it is aware, in a broad sense, of the levels of insecurity in the relevant parts of the Central African Republic ("CAR"). In this regard, the Chamber notes that the OPCV advances, but in a general sense only, that this information is "of such nature that, if revealed to the

¹² Decision on Victim Participation, 12 September 2008, ICC-01/05-01/08-103-tENG-Corr, paragraph 9; Third Decision on the Question of Victims' Participation Requesting Observations from the Parties, 17 November 2008, ICC-01/05-01/08-253, paragraph 15.

¹³ ICC-01/05-01/08-253, paragraph 13.

¹⁴ ICC-01/05-01/08-253, paragraph 14.

general public, it could lead to the identification of the persons concerned or could put third persons in danger”.¹⁵

11. Nonetheless, 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.

12. Against that background, the Chamber has reviewed the information provided by the OPCV and it has applied a case-by-case analysis of the circumstances relevant to each individual victim, as set out below.

Victim a/0455/08

13. The proposed redactions relate to information provided to the Principal Counsel of the OPCV, namely that this victim’s son might have been a prosecution witness, and the OPCV requested leave to withhold the son’s name on page one of the additional information filed on 12 November 2008.¹⁶

14. Victim a/0455/08’s application to participate was filed with the Chamber on 7 November 2008¹⁷ and additional information was submitted by the OPCV on 12 November 2008¹⁸ and on 17 November 2008.¹⁹ A confidential, redacted version of the application was provided to the Chamber on 7 November 2008²⁰ and transmitted to the parties, together with a confidential redacted

¹⁵ ICC-01/05-01/08-539, paragraph 4.

¹⁶ ICC-01/05-01/08-255-Conf-Exp, paragraph 9.

¹⁷ Annex 8 to Transmission of applications, 7 November 2008, ICC-01/05-01/08-224-Conf-Exp-Anx8.

¹⁸ Informations supplémentaires concernant la demande de participation du demandeur a/0455/08 avec 2 Annexes Confidentielles *ex parte* réservées au BCPV et à la SPRV, 12 November 2008, ICC-01/05-01/08-240-Conf-Exp.

¹⁹ Annexes 1 and 2 to Informations supplémentaires concernant la demande de participation du demandeur a/0455/08; a/0456/08; a/0457/08; a/0458/08; a/0459/08; a/0460/08; a/0461/08; a/0462/08; a/0463/08; a/0464/08; a/0465/08; a/0466/08; a/0467/08, 17 November 2008, ICC-01/05-01/08-255-Conf-Exp-Anx1 and ICC-01/05-01/08-255-Conf-Exp-Anx2.

²⁰ Annex 8 to Transmission of redacted applications to participate in the proceedings, 7 November 2008, ICC-01/05-01/08-226-Conf-Exp-Anx8.

version of the additional information,²¹ on 17 November 2008.²² Whilst document ICC-01/05-01/08-224-Conf-Exp (Transmission of unredacted applications to the Chamber) and document ICC-01/05-01/08-226-Conf-Exp (Transmission of redacted applications) were re-classified as public,²³ and a public redacted version of the additional information submitted on 12 November 2008 was filed on 30 September 2009,²⁴ the annex containing the name of the victim's son remains confidential.²⁵

15. Additionally, the application contains no reference to the fact that the son of victim a/0455/08 might have been a prosecution witness, as this information was given to the Principal Counsel orally.²⁶ The Chamber notes that the son was not used as a witness during the pre-trial stage and his name is not contained in the prosecution's list of witnesses submitted to Trial Chamber III;²⁷ therefore, his identity has never been disclosed to the parties.

16. In his application to participate, victim a/0455/08 requested that his identity is withheld from the defence and the public. The current position is that this information has not been disclosed and the defence is unaware of his identity, or that of his son.

17. The OPCV has not furnished the Chamber with any basis for concluding that disclosure to the defence of information concerning an incorrect suggestion, namely, that the son of a/0455/08 might have been a prosecution witness, will

²¹ The Pre-Trial Chamber held that the scope of redactions proposed by VPRS and VWU to the applications equally applied to the additional information submitted by the OPCV. See ICC-01/05-01/08-253, paragraph 15.

²² Annex 8 to Transmission of redacted applications to participate in the proceedings, 17 November 2008, ICC-01/05-01/08-256-Conf-Anx8.

²³ ICC-01/05-01/08-528.

²⁴ Informations supplémentaires concernant la demande de participation du demandeur a/0455/08 avec 2 Annexes Confidentielles ex parte réservé au BCPV et à la SPRV, 12 November 2008, ICC-01/05-01/08-240-Red (filed on 30 September 2009 as Annex D to ICC-01/05-01/08-539).

²⁵ Annex 2 to Informations supplémentaires concernant la demande de participation du demandeur a/0455/08 avec 2 Annexes Confidentielles ex parte réservé au BCPV et à la SPRV, 12 November 2008, ICC-01/05-01/08-240-Conf-Exp-Anx2.

²⁶ ICC-01/05-01/08-255-Conf-Exp, paragraph 9.

²⁷ Annex A to Prosecution's submission of summary and relevance of outstanding materials and reasons these have not been filed, 9 October 2009, ICC-01/05-01/08-552-Conf-Exp-AnxA.

endanger the safety, physical and psychological well-being, dignity and privacy of the father and his son, given that the identities of both a/0455/08 and his son are not known to the parties and participants. Disclosure of the fact that an unidentified individual might have been a prosecution witness will not lead to the identification of the father or his son, or to any consequential risk of harm. Therefore, the redactions requested are refused.

18. If their identities are to be disclosed in the future, this issue will be reconsidered by the Chamber, upon a written request.

Victim a/0460/08, victim a/0462/08 and victim a/0463/08

19. The redactions sought relate to victim a/0460/08's role, in that she acts on behalf of her two daughters, a/0462/08 and a/0463/08.²⁸

20. Applications by victims a/0460/08, a/0462/08 and a/0463/08 to participate were filed with the Pre-Trial Chamber on 7 November 2008²⁹ and additional information was submitted by the OPCV on 11 November 2008.³⁰ Confidential, redacted versions of the applications were submitted to the Chamber on 7 November 2008³¹ and transmitted to the parties, together with a confidential redacted version of the additional information,³² on 17 November 2008.³³ Moreover, document ICC-01/05-01/08-224-Conf-Exp (Transmission of unredacted applications to the Chamber) and document

²⁸ ICC-01/05-01/08-255-Conf-Exp, paragraph 14.

²⁹ Annexes 13, 15 and 16 to Transmission of applications, 7 November 2008, ICC-01/05-01/08-224-Conf-Exp-Anx13, ICC-01/05-01/08-224-Conf-Exp-Anx15 and ICC-01/05-01/08-224-Conf-Exp-Anx16.

³⁰ Annexes 13 and 14 to Informations supplémentaires concernant la demande de participation du demandeur a/0456/08; a/0457/08; a/0459/08; a/0460/08; a/0461/08; a/0462/08; a/0463/08; a/0464/08; a/0465/08; a/0466/08; a/0467/08 avec 25 Annexes Confidentielles *ex parte* réservé au BCPV et à la SPRV, 11 November 2008, ICC-01/05-01/08-234-Conf-Exp-Anx13 and ICC-01/05-01/08-234-Conf-Exp-Anx14.

³¹ Annexes 13, 15 and 16 to Transmission of redacted applications to participate in the proceedings, 7 November 2008, ICC-01/05-01/08-226-Conf-Exp-Anx13, ICC-01/05-01/08-226-Conf-Exp-Anx15 and ICC-01/05-01/08-226-Conf-Exp-Anx16.

³² The Pre-Trial Chamber held that the scope of redactions proposed by VPRS and VWU to the applications equally applied to the additional information submitted by the OPCV. See ICC-01/05-01/08-253, paragraph 15.

³³ Annexes 12, 14 and 15 to Transmission of redacted applications to participate in the proceedings, 17 November 2008, ICC-01/05-01/08-256-Conf-Anx12, ICC-01/05-01/08-256-Conf-Anx14 and ICC-01/05-01/08-256-Conf-Anx15.

ICC-01/05-01/08-226-Conf-Exp (Transmission of redacted applications) were re-classified as public,³⁴ and a public redacted version of the additional information submitted on 11 November 2008 was filed on 30 September 2009.³⁵

21. As set out above, a/0460/08 is acting on behalf of her two daughters and their identification numbers were not redacted when the applications for participation and additional information were transmitted to the parties.³⁶ However, this information is not known to the general public.

22. The OPCV has not furnished the Chamber with any basis for concluding that disclosure to the public of the fact that an unknown individual is acting on behalf of her two daughters may endanger the safety, physical and psychological well-being, dignity and privacy of the three individuals who are the subject of this request.

23. It is already publicly known that applicants sometimes act on behalf of others, (see Rule 89(3) of the Rules) and this has been expressly recognised in the present case in the Pre-Trial Chamber's "Fourth Decision on Victims' Participation".³⁷ However, the names and any other identifying information as regards these victims remain undisclosed. Therefore, publication that an unknown mother is acting on behalf of her two daughters will not lead to the identification of any of them. In the circumstances, the request is refused.

24. If their identities are to be disclosed in the future, this issue will be reconsidered by the Chamber, upon a written request.

³⁴ ICC-01/05-01/08-528.

³⁵ Informations supplémentaires concernant la demande de participation du demandeur a/0456/08; a/0457/08; a/0459/08; a/0460/08; a/0461/08; a/0462/08; a/0463/08; a/0464/08; a/0465/08; a/0466/08; a/0467/08 avec 25 Annexes Confidentielles *ex parte* réservé au BCPV et à la SPRV, 11 November 2008, ICC-01/05-01/08-234-Red (filed on 30 September 2009 as Annex C to ICC-01/05-01/08-539).

³⁶ Annex 12 to Transmission of redacted applications to participate in the proceedings, 17 November 2008, ICC-01/05-01/08-256-Conf-Anx12, page 21.

³⁷ Fourth Decision on Victims' Participation, 12 December 2008, ICC-01/05-01/08-320.

Victim a/0461/08

25. The OPCV seeks to redact the reference to the relationship between the legal guardian acting on behalf of victim a/0461/08 and his deceased mother.³⁸

26. Victim a/0461/08's application to participate was filed with the Chamber on 7 November 2008³⁹ and additional information was filed by OPCV on 11 November 2008.⁴⁰ A confidential redacted version of the application was submitted to the Chamber on 7 November 2008⁴¹ and was transmitted to the parties, together with a confidential redacted version of the additional information,⁴² on 17 November 2008.⁴³ Moreover, document ICC-01/05-01/08-224-Conf-Exp (Transmission of unredacted applications to the Chamber) and document ICC-01/05-01/08-226-Conf-Exp (Transmission of redacted applications) were re-classified as public,⁴⁴ and a public redacted version of the additional information submitted on 11 November 2008 was filed on 30 September 2009.⁴⁵

27. In the redacted annex transmitted to the parties, the fact that the victim is represented by his aunt and the fact that she is the sister of the victim's deceased mother was included, and therefore, this information is known to the parties,⁴⁶ but it has been withheld from the general public.

³⁸ ICC-01/05-01/08-255-Conf-Exp, paragraph 15.

³⁹ Annex 14 to Transmission of applications, 7 November 2008, ICC-01/05-01/08-224-Conf-Exp-Anx14.

⁴⁰ Annexes 9 to 12 to Informations supplémentaires concernant la demande de participation du demandeur a/0456/08; a/0457/08; a/0459/08; a/0460/08; a/0461/08; a/0462/08; a/0463/08; a/0464/08; a/0465/08; a/0466/08; a/0467/08 avec 25 Annexes Confidentielles *ex parte* réservé au BCPV et à la SPRV, 11 November 2008, ICC-01/05-01/08-234-Conf-Exp-Anx9, ICC-01/05-01/08-234-Conf-Exp-Anx10, ICC-01/05-01/08-234-Conf-Exp-Anx11, and ICC-01/05-01/08-234-Conf-Exp-Anx12.

⁴¹ Annex 14 to Transmission of redacted applications to participate in the proceedings, 7 November 2008, ICC-01/05-01/08-226-Conf-Exp-Anx14.

⁴² The Pre-Trial Chamber held that the scope of redactions proposed by VPRS and VWU to the applications equally applied to the additional information submitted by the OPCV. See ICC-01/05-01/08-253, paragraph 15.

⁴³ Annex 13 to Transmission of redacted applications to participate in the proceedings, 17 November 2008, ICC-01/05-01/08-256-Conf-Anx13.

⁴⁴ ICC-01/05-01/08-528.

⁴⁵ ICC-01/05-01/08-234-Red.

⁴⁶ ICC-01/05-01/08-256-Conf-Anx13, page 21.

28. The OPCV has not furnished the Chamber with any basis for concluding that public awareness that the unknown person acting on behalf of an equally unknown victim is his maternal aunt may endanger the safety, physical and psychological well-being, dignity and privacy of either of them, given their names and all of the other relevant identifying information has been withheld. Therefore, publicising this information will not lead to the identification of these victims and the request is refused.

29. If their identities are to be disclosed in the future, this issue will be reconsidered by the Chamber, upon a written request.

Victim a/0467/08

30. The redactions sought relate to the fact that this victim [REDACTED], and to the existence of a particular religious association referred to in page 2 of the additional information filed by the OPCV on 11 November 2008.⁴⁷

31. Victim a/0467/08's application to participate was filed with the Chamber on 7 November 2008⁴⁸ and additional information was submitted on 11 November 2008⁴⁹ and on 17 November 2008.⁵⁰ A confidential redacted version of the application was submitted to the Chamber on 7 November 2008⁵¹ and it was transmitted to the parties, together with a confidential redacted version of the additional information,⁵² on 17 November 2008.⁵³ Moreover, document ICC-

⁴⁷ ICC-01/05-01/08-255-Conf-Exp, paragraph 19.

⁴⁸ Annex 20 to Transmission of applications, 7 November 2008, ICC-01/05-01/08-224-Conf-Exp-Anx20.

⁴⁹ Annexes 23 to 25 to Informations supplémentaires concernant la demande de participation du demandeur a/0456/08; a/0457/08; a/0459/08; a/0460/08; a/0461/08; a/0462/08; a/0463/08; a/0464/08; a/0465/08; a/0466/08; a/0467/08 avec 25 Annexes Confidentielles *ex parte* réservé au BCPV et à la SPRV, 11 November 2008, ICC-01/05-01/08-234-Conf-Exp-Anx23, ICC-01/05-01/08-234-Conf-Exp-Anx24 and ICC-01/05-01/08-234-Conf-Exp-Anx25.

⁵⁰ Annex 14 to Informations supplémentaires concernant la demande de participation du demandeur a/0455/08; a/0456/08; a/0457/08; a/0458/08; a/0459/08; a/0460/08; a/0461/08; a/0462/08; a/0463/08; a/0464/08; a/0465/08; a/0466/08; a/0467/08, 17 November 2008, ICC-01/05-01/08-255-Conf-Exp-Anx14.

⁵¹ Annex 20 to Transmission of redacted applications to participate in the proceedings, 7 November 2008, ICC-01/05-01/08-226-Conf-Exp-Anx20.

⁵² The Pre-Trial Chamber held that the scope of redactions proposed by VPRS and VWU to the applications equally applied to the additional information submitted by the OPCV. See ICC-01/05-01/08-253, paragraph 15.

01/05-01/08-224-Conf-Exp (Transmission of unredacted applications to the Chamber) and document ICC-01/05-01/08-226-Conf-Exp (Transmission of redacted applications) were re-classified as public⁵⁴ and a public redacted version of the additional information submitted on 11 November 2008 was filed on 30 September 2009.⁵⁵ The annex containing the victim's identifying information remains confidential.

32. With regard to the first redaction request, the Chamber notes that this individual [REDACTED].⁵⁶ [REDACTED]. However, his application to participate and the additional information do not refer to [REDACTED], and this information has only been provided orally to Principal Counsel.⁵⁷ The Chamber notes that the parties, participants and the general public are already aware of the fact that certain victims represented by the OPCV [REDACTED].⁵⁸

33. Additionally, the Chamber observes that whilst this individual [REDACTED], when completing his application to participate as a victim, he stated that he preferred that his identity and other identifying information is withheld from the prosecution, the defence, the general public, the States and other participants.⁵⁹ However, somewhat contradictorily, in the same document, the applicant seemingly expressed his wish for this information to be communicated because it would allow for a better understanding of the events he experienced.⁶⁰ It seems to the Chamber that this apparent contradiction may stem from a misunderstanding of the application form, and

⁵³ Annex 19 to Transmission of redacted applications to participate in the proceedings, 17 November 2008, ICC-01/05-01/08-256-Conf-Anx19.

⁵⁴ ICC-01/05-01/08-528.

⁵⁵ ICC-01/05-01/08-234-Red.

⁵⁶ [REDACTED]

⁵⁷ ICC-01/05-01/08-255-Conf-Exp, paragraph 19.

⁵⁸ Sixth Decision on Victims' Participation Relating to Certain Questions Raised by the Office of the Public Counsel for Victims, 8 January 2009, ICC-01/05-01/08-349, paragraphs 9 – 12.

⁵⁹ [REDACTED]

⁶⁰ ICC-01/05-01/08-256-Conf-Anx19, Section H, page 13.

disclosure of his identity and other relevant information was not intended. [REDACTED]⁶¹.

34. In all the circumstances there is a clear risk that disclosing [REDACTED] could lead the defence to identify him [REDACTED] and the Chamber is satisfied that the redaction requested by the OPCV ([REDACTED]) is necessary in order to protect his safety, physical and psychological well-being, dignity and privacy, pursuant to Article 68(1) of the Statute and Rule 87 of the Rules, and that this measure it will not restrict the rights of the accused at this stage of the proceedings. In due course, this decision will be reviewed if the relevant circumstances change.

35. As regards the second redaction requested by the OPCV (*viz.* the phrase “de l’association religieuse citée à la page 2”),⁶² the Chamber observes that the name of this religious association is not mentioned in document ICC-01/05-01/08-255-Conf-Exp and it was redacted in the application transmitted to the parties. However, the phrase “une association religieuse catholique” was not redacted in the confidential, redacted application.⁶³ Therefore, only the parties, and not the general public, are aware of the existence of a religious association.

36. Therefore, the OPCV has not furnished the Chamber with any basis for concluding that the safety, physical and psychological well-being, dignity and privacy of victim a/0467/08 is endangered and the request is refused.

⁶¹ [REDACTED]

⁶² ICC-01/05-01/08-255-Conf-Exp, paragraph 19.

⁶³ ICC-01/05-01/08-256-Conf-Anx19, page 29.

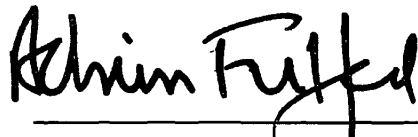
IV. Conclusions

37. For the above reasons, the Chamber hereby:

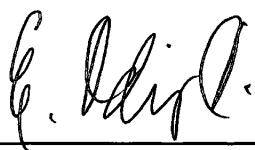
- a) Grants part of the request by the OPCV regarding victim a/0467/08 and orders that [REDACTED] is not to be disclosed.
- b) Otherwise refuses the OPCV Request.

38. A public version of this decision will be issued in due course.

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



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge Joyce Aluoch

Dated this 10 February 2010

At The Hague, The Netherlands