

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 11 December 2014

TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

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

Public

Public redacted version of "Decision on defence further request for reclassification of documents related to Witness 169 and Witness 178"

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr Jean-Jacques Badibanga

Counsel for the Defence

Mr Peter Haynes
Ms Kate Gibson
Ms Melinda Taylor

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**

Mr Xavier-Jean Keïta

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber III (“Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, hereby issues the following Decision on “Defence Request for Disclosure and Investigative Assistance concerning Witnesses 169 and 178” (“Decision”).

I. Background and Submissions

1. On 3 October 2013, the Office of the Prosecutor (“prosecution”) filed its confidential, *ex parte*, prosecution and Victims and Witnesses Unit (“VWU”) only, “Information on contacts of Witnesses 169 and 178 with other witnesses [...]” (“Prosecution’s Information”),¹ informing the Chamber that Witness 169 sent letters to, amongst others, the prosecution and the VWU. In these letters,² the witness, *inter alia*, listed alleged outstanding claims, including loss of income and “money promised by the Prosecutor for witnesses”, and provided a list [REDACTED] of 22 individuals, including 21 witnesses called by the prosecution (“Relevant Witnesses”), who he alleged had been contacted and gathered by Witness 178 to “look at loss of income claims”.³

2. On 25 October 2013, the Chamber issued its “Decision on the prosecution’s ‘Information on contacts of Witnesses 169 and 178 with other witnesses

¹ Information on contacts of Witnesses 169 and 178 with other witnesses [...], 3 October 2013, ICC-01/05-01/08-2827-Conf-Exp and confidential *ex parte* Annexes A and B. A second confidential lesser redacted version of Information on contacts of Witnesses 169 and 178 with other witnesses located [REDACTED], 3 October 2013, (ICC-01/05-01/08-2827-Conf-Exp), ICC-01/05-01/08-2827-Conf-Red2 and confidential redacted Annexes A and B were filed on 9 January 2014.

² The letters were appended as Annexes A and B to the Prosecution’s Information and appear to be addressed to several Court officials and [REDACTED]. Annex A includes a letter sent by Witness 169 to the prosecution and an email sent by Witness 169 on 7 June 2013. Annex B includes the same letter sent by Witness 169 to the prosecution, a letter sent by Witness 169 to the VWU, as well as an email sent by Witness 169 on 10 June 2013.

³ ICC-01/05-01/08-2827-Conf-Red2, paragraphs 7, 9, and 10.

located [...]” (“Decision 2845”).⁴ In this decision, the Chamber *inter alia*: (i) determined that any information relating to the allegations made by Witness 169 as to “outstanding claims” and “money promised by the Prosecutor for witnesses” may be material for the preparation of the defence and should therefore be disclosed under Rule 77 of the Rules of Procedure and Evidence (“Rules”); (ii) ordered the prosecution to prepare, in coordination with the VWU a proposed confidential redacted version of the Prosecution’s Information and its annexes; and (iii) ordered the VWU to submit a report on the issues addressed in the Prosecution’s Information, including [REDACTED].⁵

3. On 11 November 2013, the defence filed its “Defence Motion concerning ‘Information on contacts with witnesses 169 and 178 with other witnesses’” (“Defence Motion”),⁶ in which it requested, *inter alia*, that the Chamber order the provision of public redacted versions of all filings associated with the conduct of Witnesses 169 and 178.⁷
4. On 15 November 2013, pursuant to the Chamber’s instruction,⁸ the prosecution and the late legal representative of victims Maître Assingambi Zarambaud (“Me Zarambaud”) filed their observations on the Defence

⁴ Decision on the prosecution’s ‘Information on contacts of Witnesses 169 and 178 with other witnesses located [...]’ (ICC-01/05-01/08-2827-Conf-Exp)”, 25 October 2013, ICC-01/05-01/08-2845-Conf-Exp. A confidential redacted version was filed on 5 November 2013: Confidential redacted version of “Decision on the prosecution’s ‘Information on contacts of Witnesses 169 and 178 with other witnesses located [REDACTED]’ (ICC-01/05-01/08-2827-Conf-Exp)” of 25 October 2013, 5 November 2013, ICC-01/05-01/08-2845-Conf-Red.

⁵ ICC-01/05-01/08-2845-Conf-Red, paragraphs 10, 11, 12 and 13.

⁶ Defence Motion concerning “Information on contacts with Witnesses 169 and 178 with other witnesses”, 11 November 2013, ICC-01/05-01/08-2872-Conf.

⁷ ICC-01/05-01/08-2872-Conf, paragraph 50.

⁸ Email from the Chamber to the parties, participants and the Registry on 12 November 2013 at 10.19.

Motion.⁹ The prosecution requested that the Chamber reject the motion in its entirety.¹⁰ Me Zarambaud requested that the Chamber reject the defence request for provision of public redacted versions of the documents related to the conduct of Witnesses 169 and 178, or, in the alternative, that he be consulted on the redactions to be applied to the relevant filings.¹¹ For that purpose, he stressed that some of the [REDACTED] and are therefore represented by him.¹² In this capacity, Me Zarambaud submitted that in the absence of any report by the prosecution or the VWU that would prove the veracity of the allegations, any publication of these documents would be prejudicial and premature and would risk compromising the security and the physical and psychological well-being of the victims he represents.¹³

5. On 29 November 2013, pursuant to the Chamber's instruction,¹⁴ the VWU filed its confidential *ex parte*, VWU only, "Victims and Witnesses Unit's Report in relation to the Defence Motion ICC-01/05-01/08-2872-Conf pursuant to the Status Conference held on 26 November 2013" ("VWU Report 2912") together with three confidential *ex parte*, VWU only, Annexes A, B, and C.¹⁵ On 6 December 2013, further to the Chamber's

⁹ Prosecution's Response to Defence Motion concerning "Information on contacts of Witnesses 169 and 178 with other witnesses", 15 November 2013, ICC-01/05-01/08-2897-Conf; Réponse du Représentant légal de victimes, Me. Zarambaud Assingambi, à la « Defence Motion concerning "Information on contacts with Witnesses 169 and 178 with other witnesses"», ICC-01/05-01/08-2872-Conf, 15 November 2013, ICC-01/05-01/08-2894-Conf.

¹⁰ ICC-01/05-01/08-2897-Conf, paragraph 21.

¹¹ ICC-01/05-01/08-2894-Conf, page 8.

¹² ICC-01/05-01/08-2894-Conf, paragraphs 5 and 9.

¹³ ICC-01/05-01/08-2894-Conf, paragraphs 12 to 16.

¹⁴ Transcript of hearing of 26 November 2013, ICC-01/05-01/08-T-358-CONF-EXP-ENG ET.

¹⁵ Victims and Witnesses Unit's Report in relation to the Defence Motion ICC-01/05-01/08-2872-Conf pursuant to the Status Conference held on 26 November 2013, 29 November 2013, ICC-01/05-01/08-2912-Conf-Exp and confidential *ex parte* Annexes A, B and C. Annexes A, B and C respectively provide the information requested by the Chamber during the status conference as set out in paragraph 12(i), (ii) and (iii) above. Pursuant to the Decision on "Defence Motion concerning 'Information on contacts [of

instruction,¹⁶ the VWU filed a confidential *ex parte* addendum to Annex C,¹⁷ entitled Annex D,¹⁸ containing information provided in Annex B which the Chamber considered to be potentially material to the preparation of the defence.

6. On 18 December 2013, the Chamber issued its “Decision on ‘Defence Motion concerning ‘Information on contacts [of] Witnesses 169 and 178 with other witnesses’” (“Decision 2924”),¹⁹ in which it, *inter alia*, rejected the defence’s request for reclassification as public of all filings related to the conduct of Witnesses 169 and 178.²⁰
7. On 17 February 2014, the VWU filed its “Victims and Witnesses Unit’s Report pursuant to ICC-01/05-01/08-2845-Conf-Exp” (“VWU Report 2975”),²¹ in which it informed the Chamber that [REDACTED].²² [REDACTED].

The Defence Request

Witnesses 169 and 178 with other witnesses’”, 18 December 2013, ICC-01/05-01/08-2924-Conf, Report 2912 and Annexes A and C were reclassified as confidential.

¹⁶ Email from the Chamber to the VWU on 3 December 2013 at 15.53.

¹⁷ Addendum to “Annex C to Victims and Witnesses Unit’s Report in relation to the Defence Motion ICC-01/05-01/08-2872-Conf pursuant to the Status Conference held on 26 November 2013” (ICC-01/05-01/08-2912-Conf-Exp-AnxC), 6 December 2013, ICC-01/05-01/08-2917-Conf-Exp.

¹⁸ ICC-01/05-01/08-2912-Conf-Exp-AnxD. Pursuant to ICC-01/05-01/08-2924-Conf, the document was reclassified as confidential.

¹⁹ ICC-01/05-01/08-2924-Conf.

²⁰ ICC-01/05-01/08-2924-Conf, paragraph 38 (i).

²¹ Victims and Witnesses Unit’s Report pursuant to ICC-01/05-01/08-2845-Conf-Exp, 17 February 2014, ICC-01/05-01/08-2975-Conf-Exp. A confidential redacted version was filed on 28 February 2014, ICC-01/05-01/08-2975-Conf-Red.

²² ICC-01/05-01/08-2975, paragraphs 4 to 8.

8. On 4 March 2014, the defence filed its “Defence Further Request for Reclassification of Documents related to Witness 169 and 178” (“Defence Request”),²³ in which, on the basis of the principle of publicity of the proceedings,²⁴ it requests that the Chamber order (i) the VWU to finalise the completion of any [REDACTED] and file any subsequent reports within 14 days; (ii) the VWU to simultaneously file a redacted version of any subsequent report available to the defence, with redactions being limited to information revealing the witnesses’ places of residence; and (iii) the reclassification of 18 documents (“Documents”) listed in Confidential Annex A to the Defence Request (“Defence Annex A”) as public.²⁵
9. In support of its request for an order directing the VWU to finalise the completion of the VWU [REDACTED], the defence submits that “[t]he delay in the provision of [the] VWU’s [REDACTED] has caused concrete prejudice to the Accused” since “[t]he Chamber based its most recent refusal to reclassify the materials set out in Confidential Annex A on [*inter alia*] the fact that [the] VWU’s [REDACTED] was still pending”.²⁶ As such, according to the defence, “it is the pace of [the] VWU’s compliance with the Chamber’s order of 25 October 2013 that is effectively blocking the reclassification of these decisions, filings, and disclosed materials which are of seminal significance to the proceedings”.²⁷

²³ Defence Further Request for Reclassification of Documents related to Witness 169 and 178, 4 March 2014, ICC-01/05-01/08-3005-Conf and Confidential Annex A. A corrigendum was filed on 7 March 2014: Corrigendum to Defence Further Request for Reclassification of Documents related to Witness 169 and 178, 7 March 2014, ICC-01/05-01/08-3005-Conf -Corr.

²⁴ ICC-01/05-01/08-3005-Conf-Corr, paragraphs 10 to 18.

²⁵ ICC-01/05-01/08-3005-Conf-Corr, paragraph 30.

²⁶ ICC-01/05-01/08-3005-Conf-Corr, paragraph 23.

²⁷ ICC-01/05-01/08-3005-Conf-Corr, paragraph 25.

10. In relation to its request for reclassification, the defence submits that with the appropriate redactions, the majority of the Documents could already be made public “without any adverse impact on the security of witnesses, or the risk of revealing the identities of any of the individuals concerned, be they witnesses or ICC field staff”.²⁸ According to the defence, this position is supported by VWU Report 2975, in particular the conclusion that publication of the letter has not had any impact on the security situation of [REDACTED].²⁹ The defence further submits that, in the interest of the principle of equality of arms, the Documents should be afforded the same treatment as the information related to the proceedings in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda, Fidèle Babala Wandu and Narcisse Arido* (“case ICC-01/05-01/13”).³⁰

The VWU’s Observations

11. On 10 March 2014, pursuant to the Chamber’s instruction,³¹ the VWU filed its “Victims and Witnesses Unit’s Observations in relation to document ICC-01/05-01/08-3005-Conf pursuant to the instruction of Trial Chamber III dated 6 March 2014” (“VWU Observations”).³² The VWU indicates that [REDACTED].³³

²⁸ ICC-01/05-01/08-3005-Conf-Corr, paragraph 27.

²⁹ ICC-01/05-01/08-3005-Conf-Corr, paragraph 27.

³⁰ ICC-01/05-01/08-3005-Conf-Corr, paragraph 28.

³¹ Email from the Chamber to the VWU, the prosecution and the legal representative of victims on 6 March 2014 at 17.19.

³² Victims and Witnesses Unit’s Observations in relation to document ICC-01/05-01/08-3005-Conf pursuant to the instruction of Trial Chamber III dated 6 March 2014, 10 March 2014 (notified on 11 March 2014), ICC-01/05-01/08-3009-Conf.

³³ ICC-01/05-01/08-3009-Conf, paragraphs 1 and 5.

The prosecution and legal representative's responses

12. On 17 March 2014, pursuant to the Chamber's instruction,³⁴ the prosecution³⁵ and the legal representative of victims, Maître Marie-Edith Douzima-Lawson ("Me Douzima"),³⁶ filed their responses to the Defence Request, both requesting that the Chamber reject the defence's request for reclassification.³⁷
13. The prosecution submits that the reasons given by the Chamber in Decision 2942 to reject the defence's first request for reclassification, namely Me Zarambaud's submissions as to the impact on victims and the potentially negative impact on the completion of the VWU [REDACTED] are still valid.³⁸ According to the prosecution, "the VWU should be allowed to finalise its full assessment [REDACTED] and [i]mposing artificial deadlines upon the VWU [...]is unrealistic and counterproductive to a required comprehensive assessment by the VWU".³⁹ Moreover, the prosecution submits that in the event that the Chamber determines that the Documents should be reclassified as public, the parties should be allowed to propose new or additional redactions, applying to (i) the identity of protected witnesses and ICC personnel; (ii)

³⁴ Email from the Chamber to the VWU, the prosecution and the legal representative of victims on 6 March 2014 at 17.19.

³⁵ Prosecution's Response to "Corrigendum to Defence Further request for reclassification of Documents related to Witness 169 and Witness 178", 17 March 2014, ICC-01/05-01/08-3018-Conf.

³⁶ Réponse de la Représentante légale des victimes, Me. Marie-Edith Douzima-Lawson, à la « Corrigendum to Defence Further Request for Reclassification of Documents related to Witness 169 and Witness 178 », ICC-01/05-01/08-3005-Conf-Corr, 17 March 2014, ICC-01/05-01/08-3017-Conf.

³⁷ ICC-01/05-01/08-3018-Conf, paragraph 18; ICC-01/05-01/08-3017-Conf, page 11.

³⁸ ICC-01/05-01/08-3018-Conf, paragraphs 10 to 12.

³⁹ ICC-01/05-01/08-3018-Conf, paragraph 14.

information related to the safety, physical and psychological well-being, dignity and privacy of all witnesses and their family members; and (iii) financial details or other information that could lead to identifying the working practices and security measures employed by organs of the Court to protect witnesses and perform their duties vis-à-vis witnesses.⁴⁰

14. Me Douzima submits that the reasons for maintaining confidentiality of the Documents are still valid, and that publication of the Documents, even with the application of redactions, would risk (i) identifying the methods, practices and security measures employed by the VWU in the context of its assistance to witnesses and victims;⁴¹ and (ii) “disconcerting”⁴² the victims she represents.⁴³

15. Me Douzima further submits that the information provided in VWU Report 2912 and its annexes A, C and D (documents 10 to 13 in Defence Annex A), would lead to confusion among the victims she represents, might be misinterpreted and risk undermining the trust afforded to her by the victims who were consistently told not to expect any financial compensation for their participation as a victim or a witness in the proceedings before the Court.⁴⁴ With reference to the defence’s submissions as to the principle of publicity, Me Douzima stresses that this principle may be subject to exceptions based on the necessity of ensuring the protection of victims and witnesses, as provided for in Article 68(2) of

⁴⁰ ICC-01/05-01/08-3018-Conf, paragraph 15.

⁴¹ ICC-01/05-01/08-3017-Conf, paragraph 10.

⁴² “[T]roubler” in the French original.

⁴³ ICC-01/05-01/08-3017-Conf, paragraph 11.

⁴⁴ ICC-01/05-01/08-3017-Conf, paragraph 14.

the Rome Statute (“Statute”) and Rule 81(3) of the Rules.⁴⁵ In addition, Me Douzima submits that the defence’s comparison to the proceedings in case ICC-01/05-01/13 is inappropriate insofar as the proceedings in case ICC-01/05-01/13 are based on warrants of arrest, demonstrating reasonable grounds to believe that the persons committed crimes within the jurisdiction of the Court in accordance with Article 58(1) of the Statute.⁴⁶ Me Douzima further asserts that maintaining the confidentiality of the Documents would not prejudice the accused’s rights since the accused is privy to the content of these documents and in a position to make submissions in that regard.⁴⁷ Finally, Me Douzima submits that while not opposing publication of the information as a matter of principle, at this stage the reliability of the information contained in the Documents has not been established and the VWU reports show that there is not enough information that would justify the risk of confusion and unnecessary exposure of victims.⁴⁸

II. Analysis and Conclusions

16. In accordance with Article 21(1) of the Statute, the Chamber has considered Articles 64(2) and (7), 67(1), and 68 of the Statute, and Regulations 20 and 23*bis*(3) of the Regulations of the Court (“Regulations”).

⁴⁵ ICC-01/05-01/08-3017-Conf, paragraph 16.

⁴⁶ ICC-01/05-01/08-3017-Conf, paragraph 18.

⁴⁷ ICC-01/05-01/08-3017-Conf, paragraph 19.

⁴⁸ ICC-01/05-01/08-3017-Conf, paragraph 20.

- (i) *On the request to order the VWU to finalise the completion of the VWU [REDACTED] and to simultaneously file a redacted version of any subsequent report*

17. In relation to the defence's request for an order compelling the VWU to finalise the completion of the VWU [REDACTED] within 14 days, the Chamber notes that the VWU describes a number of difficulties it faces in trying to complete the [REDACTED]. According to the VWU, such difficulties include its dependence on [REDACTED].⁴⁹

18. In view of its duty under Article 68 of the Statute to protect, *inter alia*, the safety, physical and psychological well-being of victims and witnesses, the Chamber finds that the VWU should continue its efforts and take any available measures to [REDACTED]. For example, noting that [REDACTED], the Chamber considers that not only the prosecution but also the legal representative might be in a position to assist the Registry in its efforts in that respect.

19. Notwithstanding the above, the Chamber considers that the imposition of a deadline, as requested by the defence, would not provide any solution to the difficulties faced by the VWU and would therefore not facilitate the finalisation of the VWU [REDACTED]. Accordingly, the Chamber rejects the defence's request for an order that the VWU finalise the completion of any [REDACTED] and reiterates its order that the VWU submit the requested document as soon as practicable. As to the defence's request for the submission of a public redacted version of such document, the

⁴⁹ ICC-01/05-01/08-3009-Conf, paragraphs 2 to 5; ICC-01/05-01/08-2975-Conf-Red, paragraph 4.

Chamber defers its decision on the matter until the provision of such document by the VWU.

On the request to order the reclassification of the Documents

20. The publicity of the proceedings is a well-established principle which has consistently been stressed in the jurisprudence of this Court.⁵⁰ However, it was also acknowledged that this principle is not absolute and needs to be balanced against, in particular, the Chamber's duty under Article 68(1) of the Statute "to protect the safety, physical, psychological well-being, dignity and privacy of victims and witnesses".⁵¹

21. When balancing these requirements in its Decision 2924, the Chamber noted the concerns raised by Me Zarambaud and the need to consider the pending VWU [REDACTED], and concluded that "*at this stage*, the request for reclassification should be rejected".⁵² However, in a later decision, the Chamber also stressed that it had yet to issue a final decision on the reclassification of the relevant documents as public,⁵³ which is consistent

⁵⁰ See, for example, Trial Chamber IV, *The Prosecutor v Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Judgment on the appeal of Mr Abdallah Banda Abakaer Nourain and Mr Saleh Mohammed Jerbo Jamus against the decision of Trial Chamber IV of 23 January 2013 entitled "Decision on the Defence's Request for Disclosure of Documents in the Possession of the Office of the Prosecutor", 28 August 2013, ICC-02/05-03/09-501, paragraph 43; and Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Transcript of hearing of 20 September 2010, ICC-01/04-01/07-T-189-ENG ET WT, page 10, lines 12 to 20.

⁵¹ See for example, ICC-01/04-01/07-T-189-ENG ET WT, page 10, line 21 to page 11, line 5; Decision on in-court protective measures for Witnesses 38, 22 and 87, 19 November 2010, ICC-01/05-01/08-1021-Conf, paragraph 24; Decision on in-court protective measures for Witness 45, 24 January 2012, ICC-01/05-01/08-2063-Conf, paragraph 16; and Decision on in-court protective measures for Witness 36, 9 March 2012, ICC-01/05-01/08-2160-Conf, paragraph 9.

⁵² ICC-01/05-01/08-2924-Conf, paragraph 17 (emphasis added).

⁵³ ICC-01/05-01/08-2980-Conf, paragraph 25.

with its power under Regulation 23*bis*(3) of the Regulations to “re-classify a document upon request by any other participant or on its own motion”.

22. In its determination of the defence’s renewed request for reclassification, the Chamber finds it appropriate to consider any relevant developments within the period between the issuance of Decision 2924 and the filing of the Defence Request, and to assess whether such developments warrant a departure from the conclusions in Decision 2827.

23. Firstly, as set out in paragraph 17 above, the Chamber notes the VWU’s submissions as to the difficulties encountered in its attempt to complete the [REDACTED]. These submissions suggest that subjecting the publication of the Documents to the completion of the [REDACTED] might result in the Documents remaining confidential for an uncertain or indefinite period of time, which would not be desirable in light of the principle of publicity.

24. The Chamber further notes that the issues addressed in the Documents, and in particular allegations as to money being promised to witnesses, have already been raised in the media.⁵⁴ Such media references, in the absence of a detailed explanation of the relevant context, may cause undue speculations in relation to the issues addressed in the Documents. As such, the Chamber considers that a publication of the Documents may provide the relevant context and prevent any possible misunderstanding.

⁵⁴ See for example an article entitled “ICC promised money to 23 key witnesses against Jean Pierre Bemba”, published on 11 December 2013 in the online journal News of Rwanda, <http://www.allvoices.com/news/16138102-icc-promised-money-to-23-key-witnesses-against-jean-pierre-bemba> (last accessed on 1 May 2014).

25. Turning to the Chamber's duties under Article 68(1) of the Statute, the Chamber finds that there appears to be no suggestion that publication of the Documents would have a negative impact on the physical or psychological well-being of witnesses and victims. Indeed, as acknowledged by the defence, the Documents can be published with the necessary redactions in order to protect the Relevant Witnesses' identities.
26. In addition, the Chamber notes the VWU's submissions that (i) [REDACTED]; (ii) the VWU has no corroborating information that the letter has actually been sent to all the recipients mentioned on the document; (iii) the letter has not triggered any threat or action of retaliation against ; and (iv) protection measures from the VWU are not required at this stage.⁵⁵
27. Finally, the Chamber is not persuaded by the legal representative's argument that the reclassification of the Documents would lead to confusion among victims and jeopardise the victims' trust in her. Publication of the Documents may have the benefit of providing the relevant context and explanations to the allegations prevalent in the media. Contrary to Ms Douzima's submissions, this benefit would be particularly relevant for the victims who might have been affected or confused as a result of the allegations.
28. In view of the above, the Chamber concludes that the documents listed in Defence Annex A, with the exception of the documents referred to in paragraph 30 below, shall be reclassified as public, together with the

⁵⁵ ICC-01/05-01/08-2975-Conf-Anx-Red, page 5.

necessary redactions. Redactions shall be limited to (i) the identity of protected witnesses and ICC personnel; (ii) information related to the safety, physical and psychological well-being, dignity and privacy of all witnesses and their family members; and (iii) financial details or other information that could lead to identifying the working practices and security measures employed by organs of the Court to protect witnesses and perform their duties vis-à-vis witnesses. In addition, the Chamber orders the Registry and the parties and participants to file redacted versions of the documents underlying the present Decision, consistent with the aforementioned redaction categories.

29. The redacted documents shall directly be filed by the Registry, the parties and participants, in accordance with the deadlines set out in paragraph 31.⁵⁶ Public redacted versions of the Chamber's related decisions will be issued in due course.

30. Turning to the exceptions to reclassification, the Chamber notes that the Documents include the communications sent by Witness 169 (documents 2 and 3 of Defence Annex A) as well as VWU Report 2912 and its Annexes A, C and D (documents 10 to 13 of Defence Annex A). The Chamber notes that these documents comprise a large amount of information falling under the categories of redactions set out in paragraph 28. The Chamber further finds that the relevant content of these documents, to the extent

⁵⁶ This approach is consistent with the approach adopted by the Appeals Chamber, which considered that "the primary responsibility for the filing of public redacted versions of submissions that are compliant with protective measures and the confidentiality of information, as ordered by the relevant Chamber, lies first and foremost with the party or participant making the filing". See Appeals Chamber, *The Prosecutor v. Mathieu Ngudjolo Chui*, Order on the filing of public redacted versions of submissions by the parties and participants, 4 October 2013, ICC-01/04-02/12-143, paragraph 8.

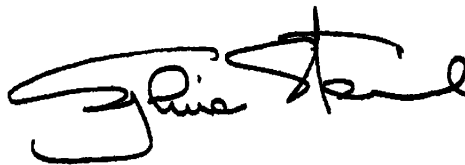
required for a proper understanding of the issue at stake, is sufficiently explained in the documents that will be reclassified as public. Accordingly, the Chamber decides that these documents shall remain confidential.

31. In view of the above, the Chamber hereby:

- (i) REJECTS the defence's request for an order that the VWU finalise the completion of [REDACTED] within 14 days;
- (ii) ORDERS the VWU to continue its efforts to complete the [REDACTED] as soon as practicable;
- (iii) DEFERS its decision on the defence's request that the VWU provide a redacted version of any subsequent report;
- (iv) PARTIALLY GRANTS the defence's request for reclassification of documents as public, together with the necessary redactions;
- (v) DIRECTS the prosecution, Me Douzima and the VWU to coordinate on the redactions to be applied to their respective filings, and to file by 4 June 2014 redacted versions of (a) documents 1, 5, 7, 8, 9, and 16 listed in Defence Annex A, and (b) the VWU Observations, the Prosecution Response and Me Douzima's Response;
- (vi) DIRECTS the defence to prepare, in line with the redactions applied by the prosecution, Me Douzima and the VWU, redacted versions of (i) documents 6, 15 and 17 listed in Defence Annex A; and (ii) the Defence Request, and file these documents by 18 June 2014;

- (vii) REJECTS the defence's request for reclassification of documents 2, 3, 10, 11, 12 and 13 listed in Defence Annex A and DECIDES that these documents remain confidential.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 11 December 2014

At The Hague, the Netherlands