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

Date: **30/06/2017**

THE APPEALS CHAMBER

Before: Judge Christine Van den Wyngaert, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Howard Morrison
Judge Chile Eboe-Osuji
Judge Piotr Hofmański

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF

THE PROSECUTOR
v. JEAN-PIERRE BEMBA GOMBO

Public with Confidential Annex A

**Bemba Defence Application to Lift the Freeze Ordered by Trial Chamber III
Regarding Specific Assets.**

Source: Defence for Mr. Jean-Pierre Bemba Gombo in ICC-01/05-01/13

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

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1. The Article 70 Defence for Mr. Jean-Pierre Bemba respectfully submits the current application for the Honourable Appeals Chamber to take such steps as are necessary to ensure that the Defence is in a position to cooperate fully with the payment of any fine upheld in whole or in part by the Appeals Chamber in the Article 70 case.
2. On 22 March 2017, Trial Chamber VII imposed on Mr. Bemba a fine of 300,000 euros, and ordered Mr. Bemba to pay this fine within three months of the issuance of the decision.¹
3. The Chamber's assessment of Mr. Bemba's ability to contribute to the costs of this fine was based on the Registry's calculation of the value of assets, many of which are either frozen, or of a nature that is not easily liquidated in satisfaction of the fine.² In contrast to his co-defendant, the Trial Chamber did not identify specific assets that could be realised for this purpose.
4. Although the execution of this fine is suspended by virtue of the Defence appeal against conviction and sentence, Mr. Bemba wishes to ensure that there are no impediments as concerns his ability to cooperate fully, and in a timely manner, with the execution of any financial penalty upheld in whole or in part on appeal. The Defence notes, in this regard, that previous attempts by the Court to lift or vary the freeze on Mr. Bemba's bank accounts have entailed a considerable degree of time and effort. The Defence is therefore filing this application pre-emptively, in order to ensure that Mr. Bemba is not exposed to the risk that the fine is converted to a custodial sentence due to such delays. At the same time, the Defence underscores that Mr. Bemba is not seeking direct access to the frozen assets; the purpose of

¹ ICC-01/05-01/13-2123-Corr, p. 99.

² ICC-01/05-01/13-2123-Corr, para. 200.

this application is to ensure the timely availability of the funds to the Court, and not Mr. Bemba.

5. The most recent report filed by the Registry estimated that there are, pending verification, €477,000 euros in Mr. Bemba's account in the DRC,³ which is purportedly comprised of salary payments linked to Mr. Bemba's position as Senator and his former position as Vice-President of the Democratic Republic of Congo (DRC).⁴ This account was frozen by order of Trial Chamber III.
6. In line with the above objectives, on 31 May 2017, the Defence requested the Registry to,⁵
 - inform the Defence as to whether the amount in the account has been verified, and if so, how much is there;
 - if not, conduct such verification, and duly inform the Defence as to the amount that is in the account;
 - inform the Defence as to the steps which need to be taken (if any) on the part of Mr. Bemba to release the funds to the Court, in the event that the fine is upheld in whole or in part.
7. On 21 June 2017, the Registry informed the Defence that the Registry had not yet received information from the DRC authorities concerning the exact amount in the account, but suggested that the Defence could instead, attempt to access the account online in order to verify the contents.⁶ The Registry further proposed that the Defence seize the Chamber in relation to the steps required to release the funds to the Court.

³ ICC-01/05-01/13-2119-Conf-Exp-AnxI

⁴ Although the Defence has informed the Registry that Mr. Bemba's legal entitlement to receive a Vice-Presidential salary was linked to the duration of his term, the Registry estimate assumes that the entitlement continues: See ICC-01/05-01/08-3381, para.15; ICC-01/05-01/13-2089-Conf-Exp-AnxD, p. 4.

⁵ Annex A.

⁶ Annex A.

8. The Defence informed the Registry that it has no information at its disposal as to the details of the online version of this account, and does not wish to engage in any activity that might create a false perception that the Defence is attempting to access or deal with frozen funds.⁷ The Defence inquired as to whether the Registry was in a position to propose an alternative solution, but has yet to receive a substantive proposal.
9. Since the case file is now with the Appeals Chamber, the Appeals Chamber has the competence to review or revoke the freezing order imposed by Trial Chamber III.
10. Given that the above issues are linked to the freezing order, the Defence respectfully requests the Appeals Chamber to take the following measures, which aim to ensure that Mr. Bemba is in a position to cooperate fully with both the freezing order issued by Trial Chamber III and any future orders of the Court:

Firstly, clarify whether the Defence would be in breach of the freezing order if the Defence were to request the DRC bank to disclose to the Defence the exact amount in Mr. Bemba's account;

Secondly, if such direct interaction with the bank would be incompatible with the freezing order, instruct the Defence as to the appropriate mechanism for verifying the amount in this account;

Thirdly, take such steps as are necessary to ensure the availability to the Court of the funds in this account, in the event that the fine is upheld on appeal.

⁷ Annex A.



Melinda Taylor
Counsel for Mr. Jean-Pierre Bemba

Dated this 30th day of June 2017

The Hague, The Netherlands