



Original: **English**

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

Date: 30/10/2018

**TRIAL CHAMBER III**

**Before:** Judge Geoffrey Henderson, Presiding Judge  
Judge Chang-ho Chung  
Judge Kimberly Prost

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC**

*Public Redacted*

**Public Redacted Version of “Preliminary application for reclassification of filings, disclosure, accounts and partial unfreezing of Mr. Bemba’s assets”**

**Source:** Mr. Jean-Pierre Bemba Gombo

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

**The Office of the Prosecutor**

**Counsel for Mr. Bemba**

Peter Haynes QC

Kate Gibson

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented**

**Applicants**

**(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

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

**States' Representatives**

**Amicus Curiae**

## **REGISTRY**

---

**Registrar**

Peter Lewis

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Trust Fund for Victims**

## A. INTRODUCTION

1. This application is brought before Trial Chamber III by Mr. Jean-Pierre Bemba as a matter of expediency. Whilst, according to strict legal construction, Trial Chamber III may be *functus officio* and no longer seised of the case ICC-01/05-01/08, Mr. Bemba notes that the Appeals Chamber which entered his acquittals,<sup>1</sup> and, therefore, might have been expected to make all consequent ancillary orders, would require reconstitution to consider the matter. He notes, further, that Trial Chamber III is apprised of all matters relating to the freezing of his assets, as well as other aspects of the financial and contractual relationship between himself and the Registry of the International Criminal Court.<sup>2</sup> Finally, he notes that the instruction to States Parties to protect his assets was the product of judicial decisions under Articles 57(3) and 91(3) of the Statute,<sup>3</sup> and, accordingly, a similar judicial decision is required to reverse the effects of those orders.

2. In short, Mr. Bemba contends that there is no longer any legal basis for any state or institution to interfere with his rights over his own property, and that those bodies should at the earliest opportunity be requested to discharge any freezing, protective or charging orders over the same. However, the state of Mr. Bemba's knowledge of the extent of the freezing of his assets is currently limited to what is set out in the "Registry's Updated Solvency Report on Mr Jean-Pierre Bemba Gombo's assets" at Annex A hereto.<sup>4</sup>

3. The information set out therein is incomplete and unsatisfactory.<sup>5</sup> As a preliminary matter, Mr. Bemba is entitled to an accurate overview of the requests submitted and orders made to freeze his property, a precise inventory of the

---

<sup>1</sup> ICC-01/05-01/08-3636-Conf.

<sup>2</sup> ICC-01/05-01/08-3651-US-Exp.

<sup>3</sup> ICC-01/05-01/08-8.

<sup>4</sup> ICC-01/05-01/08-3650-Conf-Exp; ICC-01/05-01/08-3650-Conf-Exp-Anx; "updated report".

<sup>5</sup> In relation to a number of items of property, it is apparently "not known" whether freezing orders have been made or not, and as shall be amplified hereinafter, at least one item seized and frozen, does not appear in the schedule.

property currently frozen, its location, and an account of its deterioration, depreciation or destruction during its time in the custody of other states or institutions, whilst held on trust by them for its rightful owner. The preliminary orders sought are a necessary prerequisite to Mr. Bemba making a full application for the return of his properties.

4. The orders requested should be made expeditiously, to mitigate the losses Mr. Bemba continues to suffer as a result of the freezing of his assets. Further, whilst Mr. Bemba does not accept that his contractual relationship with the Registry of the ICC is of any relevance to the question of whether the continued interruption of his rights over his own property is lawful, it is worthy of note that the prompt discharge of the freezing orders herein will facilitate his compliance with his obligations thereunder.

5. Lastly, in relation to [REDACTED], and to prevent his incurring further financial loss.

## **B. LEVEL OF CONFIDENTIALITY**

6. This application is filed *ex parte*, only available to the Registry and Mr. Bemba for three reasons: firstly, Mr. Bemba, having been acquitted by the Appeals Chamber, is no longer a defendant, accused, or even a suspect; the Prosecution and the Legal Representatives of Victims are thus no party to the process of returning his property to him. Secondly, the matter concerns his private financial situation, which is confidential to the other parties and participants to the original criminal proceedings, and, thirdly, because the submissions herein will be incomprehensible without substantial reference to matters previously the subject of Chamber's decisions made under seal and *ex parte*, available only to the Registry and Mr. Bemba.<sup>6</sup>

---

<sup>6</sup> ICC-01/05-01/08-3651-US-Exp; See paras. 4, and 36-52 herein.

### C. PROCEDURAL HISTORY

7. On 9 May 2008 the Prosecutor applied for a warrant of arrest under Article 58 of the Statute.<sup>7</sup> The warrant included an application for the freezing of Mr. Bemba's assets.<sup>8</sup>

8. On 27 May 2008, Pre-Trial Chamber III issued a request for cooperation to the Republic of Portugal to identify, trace, freeze and seize any property or assets of Mr. Jean-Pierre Bemba located on its territory.<sup>9</sup>

9. On 9 July 2008, the Defence for Mr. Bemba applied for legal assistance.<sup>10</sup> On 25 August 2008, the Registrar provisionally rejected this request.<sup>11</sup> On 26 August 2008, the Defence applied to lift the seizure on Mr. Jean-Pierre Bemba's assets and in particular on [REDACTED] to cover his family expenses as well as to pay for his legal fees.<sup>12</sup>

10. On 9 September 2008, the Defence requested a review of the Registrar's Decision of 25 August 2008 on his application for legal assistance.<sup>13</sup> In a status conference on 8 October 2008, Mr. Bemba raised concerns that all his assets were frozen and he was thus unable to support his family or to pay the cost of his legal fees.<sup>14</sup>

11. On 10 October 2008, Pre-Trial Chamber III partially granted the Defence's request to lift the seizure order and temporarily authorises the competent

---

<sup>7</sup> ICC-01/05-01/08-128-Conf-AnxA.

<sup>8</sup> ICC-01/05-01/08-128-Conf-AnxA, para. 131.

<sup>9</sup> ICC-01/05-01/08-8.

<sup>10</sup> ICC-01/05-01/08-76-Conf-Exp-Anx1.

<sup>11</sup> ICC-01/05-01/08-76-tENG.

<sup>12</sup> ICC-01/05-01/08-81-Conf-tENG.

<sup>13</sup> ICC-RoC85-01/08-1-Conf-tENG.

<sup>14</sup> T-7-Conf-Exp.

authorities of [REDACTED] until a decision on the confirmation of charges has been issued.<sup>15</sup>

12. On 28 October 2008, the Defence made a second application for the lifting of the seizure of assets,<sup>16</sup> requesting partial lifting of the seizure of Mr. Bemba's account [REDACTED] to cover the fees and disbursements of the Defence Team, and [REDACTED] for the support of the family as well as [REDACTED].<sup>17</sup> It also requested that Mr. Bemba be authorised to [REDACTED] to cover outstanding fees and disbursements of counsel [REDACTED], family support [REDACTED] as well as the costs of the investigation requirements of the Defence Team [REDACTED].<sup>18</sup>

13. On 14 November 2008, Pre-Trial Chamber III rejected the application for the lifting of the seizure of assets<sup>19</sup> and ordered that the 10 October Decision be implemented.<sup>20</sup>

14. On 29 December 2008, the Defence made a third application for lifting of the seizure of assets, arguing that the overall current balance of the [REDACTED] was not sufficient to proceed to further transfers of money specified by the 10 October Decision after December 2008. The Defence requested that the Chamber amend its authorisation to the effect that the relevant monthly amount be released from [REDACTED].<sup>21</sup>

15. On 31 December 2008, Pre-Trial Chamber III partially granted the third application for the lifting of the seizure of assets on an urgent and provisional basis and authorised the competent authorities of [REDACTED] from account at

---

<sup>15</sup> ICC-01/05-01/08-149-Conf ("10 October Decision").

<sup>16</sup> ICC-01/05-01/08-193-Conf-tENG.

<sup>17</sup> ICC-01/05-01/08-193-Conf-tENG, para. 18.

<sup>18</sup> ICC-01/05-01/08-193-Conf-tENG, para. 18.

<sup>19</sup> ICC-01/05-01/08-249.

<sup>20</sup> ICC-01/05-01/08-149-Conf.

<sup>21</sup> ICC-01/05-01/08-337-Conf.

[REDACTED], for the month of January 2009 and on a monthly basis until the issuance of the decision on the confirmation of the charges.<sup>22</sup>

16. At a 29 June 2009 status conference, the Defence raised concerns about the non-payment of legal fees undermining the effective representation of Mr. Bemba before the Chamber.<sup>23</sup> The Registry informed the Chamber of the difficulties it faces in implementing the 31 December Decision, and proposed granting temporary legal aid, pending the availability of the account authorized by the Chamber in the 31 December Decision.<sup>24</sup> In a series of emails between 29 June and 17 July 2009, the Counsel Support Section indicated that it refused to implement the Registry's solution.<sup>25</sup>

17. On 20 July 2009, the Defence requested a stay of proceedings, on the basis that it was unable to represent Mr. Bemba's interests without being paid.<sup>26</sup> On 25 August 2009, it filed a request for review of the decision rejecting the application for legal assistance asking the Registry to review its 25 August 2008 decision and to be granted temporary or definitive legal aid. On 4 September 2009, the Defence filed its fourth request for lifting of the seizure of Mr. Bemba's [REDACTED], to allow him to exercise his property rights of "usufruct and disposal" to access the necessary funds to pay his legal fees, and meet the needs of his family.<sup>27</sup>

18. On 18 September 2009, a Single Judge of Pre-Trial Chamber II rendered its decision on Defence application for lifting the seizure Mr. Bemba's property. It said that at no point in time had the Court ordered the seizure of Mr. Jean-Pierre Bemba's [REDACTED] and thus, the responsibility for lifting the alleged seizure on

---

<sup>22</sup> ICC-01/05-01/08-339-Conf ("31 December Decision").

<sup>23</sup> T-13-CONF-ENG.

<sup>24</sup> T-13-CONF-ENG.

<sup>25</sup> ICC-01/05-01/08-452-Anx1; ICC-01/05-01/08-452-Anx2; ICC-01/05-01/08-452-Anx3; ICC-01/05-01/08-452-Anx4.

<sup>26</sup> ICC-01/05-01/08-452-Corr.

<sup>27</sup> ICC-01/05-01/08-505-Conf.

it, if any, did not lie within the competence of the Chamber.<sup>28</sup> Concerning [REDACTED], the Single Judge asked to first be provided with the necessary information regarding the possibility [REDACTED] and the conditions, according to which, this process could be properly finalised taking into consideration that [REDACTED] remained at the disposal of the Court.<sup>29</sup> Finally, the Single Judge asked the Registrar, in consultation with [REDACTED], to explore all options concerning the possibility and the conditions under which [REDACTED].<sup>30</sup>

19. On 24 September 2009, The Registrar refused to grant legal aid, on the basis, *inter alia*, that the freezing order on one bank account would be lifted in the near future and that the winding up of certain property was in progress. The Registry also considered that relevant material relating to Mr. Bemba's assets had not been brought to the attention of the Registry: Mr. Bemba had not denied having other property and assets than the two bank accounts mentioned and he had confirmed his status as heir to his late father.<sup>31</sup>

20. At a 7 October 2009 status conference, Trial Chamber III noted the *impasse* as regards the funding of Mr. Bemba's Defence. The Chamber requested the Registrar to submit her observations on the existence of procedural or regulatory obstacles to the payment of interim legal aid to Mr. Bemba against repayment of funds paid once the assets become available.<sup>32</sup>

21. On 9 October 2009, the Defence argued that Mr. Bemba was unable to access any of his funds, and that he should be provided with immediate financial assistance, implemented retroactively.<sup>33</sup>

---

<sup>28</sup> ICC-01/05-01/08-531-Conf, para. 14.

<sup>29</sup> ICC-01/05-01/08-531-Conf, para. 15.

<sup>30</sup> ICC-01/05-01/08-531-Conf, para. 15.

<sup>31</sup> ICC-01/05-01/08-545-Conf-Exp-Anx1.

<sup>32</sup> T-14-ENG.

<sup>33</sup> ICC-01/05-01/08-551.



22. On 9 October 2009, the Registrar submitted that she had no power to provide the payment of interim legal aid to a non-indigent accused, even if there is repayment of funds paid; the Court had no special guarantee for the recovery of the funds and would come after any potential creditors; and the provisions concerning sums unduly paid for legal aid applied only in the case of error or deception on the property of the beneficiary of legal aid and were therefore not applicable in the situation of funds voluntarily given to a person who is not indigent.<sup>34</sup>

23. On 26 November 2009, Trial Chamber III ordered the Registry to advance a monthly sum (with retroactive effect from March 2009) to Mr. Bemba to cover his financial obligations to his counsel, until there was a material change in his financial circumstances. Mr. Bemba would have to repay the Court out of his own funds.<sup>35</sup>

24. On 8 June 2018, Mr. Bemba was acquitted by the Appeals Chamber of the ICC.<sup>36</sup>

#### D. SUBMISSIONS

25. There is no legal basis to continue to freeze Mr. Bemba's assets. The grounds for asking states to protect his assets for the purposes of orders of restitution ceased to exist upon his acquittal. The fact that the freezing orders themselves compelled him to borrow money from the Registry of the ICC to be able to defend himself, and that a portion of the sum borrowed may still be owing, is no reason unlawfully to permit the freezing orders to continue. Indeed the discharge of the freezing orders is a necessary prerequisite of Mr. Bemba having the ability to pay his debts. The Chamber, moreover, has no cause to doubt Mr. Bemba's *bona fides* in that regard, given the history of the matter. These submissions will be amplified hereunder.

---

<sup>34</sup> ICC-01/05-01/08-553-Conf-Exp.

<sup>35</sup> ICC-01/05-01/08-567-Red.

<sup>36</sup> ICC-01/05-01/08-3636-Red

- (a) A valid and current warrant is a prerequisite to the issuance of a request under article 57(3) and a subsisting investigation or prosecution is a prerequisite of an order under article 93(1)**

26. Pursuant to Article 57(3) of the Rome Statute, “the Pre-Trial Chamber may:  
[...]

- (e) Where a warrant or a summons has been issued under article 58, and having regard to the strength of the evidence and the rights of the parties concerned, as provided for in the Statute and the Rules of Procedure and Evidence, seek the cooperation of States pursuant to article 93 paragraph (1)(k), to take protective measures for the purpose of forfeiture, in particular for the ultimate benefit of victims.”

27. Article 93(1) provides that the Court may request states parties to provide assistance “in relation to investigations or prosecutions [...] (k) [t]he identification, tracing and freezing or seizure of proceeds, property and instrumentalities of crimes for the purpose of eventual forfeiture”. Thus similar powers are granted to the “Court” generally, as to the Pre-Trial Chamber.

28. Article 58 provides that “[a]t any time after the initiation of an investigation, the Pre-Trial Chamber shall, on the application of the Prosecutor, issue a warrant of arrest of a person if, having examined the application and the evidence, or other information submitted by the Prosecutor, it is satisfied that [...] there are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court”.

29. Pursuant to paragraph 4 of Article 58, “[t]he warrant of arrest shall remain in effect until otherwise ordered by the Court.” Accordingly, no request can be made to a state to protect for the purposes of forfeiture (*i.e.* freeze) the property of a person unless the conditions for the issue of a warrant of arrest have been satisfied and a warrant has in fact been issued in relation to that person. The “Court” may order that the warrant shall cease to be of effect at any time.

**(b) An acquittal is an order terminating the effect of the warrant under Article 58(4) as well as the prosecution and investigation under Article 93(1)**

30. On 8 June 2018, the Appeals Chamber of the ICC acquitted Mr. Bemba, finding that it was “appropriate to reverse Mr Bemba’s conviction and enter an acquittal”<sup>37</sup> because “one of the elements of command responsibility under article 28(a) of the Statute was not properly established and Mr Bemba cannot be held criminally liable under that provision for the crimes committed by MLC troops during the 2002-2003 CAR operation”.<sup>38</sup> As a result, it ordered that “the acquitted person is to be released from detention immediately”<sup>39</sup> as there was “no reason to continue Mr Bemba’s detention on the basis of the present case”.<sup>40</sup>

31. Self-evidently, the judgment of the Appeals Chamber is an order of “the Court”. Its terms, finding that “Mr Bemba cannot be held criminally responsible” for the crimes as charged negates any suggestion that reasonable grounds persist to believe that he has committed those offences. His immediate release from detention by the Appeals Chamber, moreover, brings to an end the warrant for his arrest as well as the prosecution and investigation.

32. Moreover, in exercising any jurisdiction under Article 57(3) of the Statute, the Pre-Trial Chamber has to have regard to the “strength of the evidence and the rights of the parties”. Given the findings of the Appeals Chamber, the inevitable conclusion of any Chamber considering seeking states’ cooperation must be that, whether or not the warrant remained valid under Article 58, the request was nonetheless unjustifiable.

**(c) The purpose for the making of a freezing order pursuant to Articles 57(3) and 93(1) of the Statute no longer exists.**

---

<sup>37</sup> ICC-01/05-01/08-3636-Conf, para. 198.

<sup>38</sup> ICC-01/05-01/08-3636-Conf, para. 194.

<sup>39</sup> ICC-01/05-01/08-3636-Conf, para. 199.

<sup>40</sup> ICC-01/05-01/08-3636-Conf, para. 200.

33. The essential qualities of a freezing order under Article 57(3) or Article 93(1) of the Statute are twofold. Firstly, it is a protective provision in relation to orders that may be sought in the future, and secondly, that the orders it seeks to ensure are either punitive or reparative. Accordingly, assets can be frozen in order to protect them for reparations to victims, or they can be frozen to satisfy orders for forfeiture.

34. In the pure sense of the word, an order for forfeiture relates to property that has been acquired, directly or indirectly, from the commission of the crimes with which the accused is charged.<sup>41</sup> However, the phrase forfeiture in Article 57(3) of the Statute has been interpreted as including not just the penalty, but also the act of seizing property for the purposes of satisfying an order for reparations.<sup>42</sup>

35. In the instant case, however, no order for restitution was ever contemplated, the relevant property having no direct or indirect connection with the crimes charged. The acquittal of Mr. Bemba, moreover, means that no order for reparations is possible, a fact which the Trial Chamber herein has confirmed.<sup>43</sup>

36. Accordingly, even leaving aside the absence of a proper basis to issue a warrant and/or the termination of the effect of the warrant and prosecution by reason of the acquittal, there is no subsisting legal basis to request a state's cooperation to take protective measures or make freezing orders for the purposes of forfeiture in this case, since no forfeiture, of any sort, is within anybody's contemplation.

37. For the avoidance of doubt, and by reason of the matters set out hereinafter, the fact that Mr. Bemba may owe monies to the Registry of the ICC, pursuant to a contract between them, would provide no basis for seeking a state's cooperation in

---

<sup>41</sup> Article 77(2) of the Rome Statute.

<sup>42</sup> ICC-01/09-02/11-931, para. 12.

<sup>43</sup> ICC-01/05-01/08 -3653, para. 3.

the freezing of his assets, and provides no basis for continuing to request such cooperation, firstly, because he is not, nor could he be the subject of an Article 58 warrant, and secondly, because the requisite purpose of the orders could not be made out, and thirdly, because there is no prosecution or investigation.

**(d) The contractual situation between the Registry and Mr. Bemba is irrelevant to the question of the discharge of the freezing orders**

38. As the Chamber has previously observed,<sup>44</sup> by reason of the freezing orders herein, Mr. Bemba's Defence legal fees had to be funded by way of monies advanced by the Registry to be thereafter repaid by him.

39. It is of particular note that the arrangement created a contractual relationship between Mr. Bemba and the Registry, pursuant to which "a legally enforceable document signed by the accused enabling the Court to be repaid out of the funds of the accused, as and when they became available" was executed. The Registry has legally enforceable rights pursuant to that agreement, and Mr. Bemba has at no time sought to avoid his responsibilities under it. Indeed, upon the one occasion when assets of his became disposable to him, he cooperated in the repayment to the Court of 2.07 million euros, rather more than is now outstanding.

40. At no time did the Pre-Trial or Trial Chamber (as previously composed) assert that it was, on behalf of the Court, a party to this agreement, less still the final arbiter in relation to any disputes under it. Indeed to have done so would at least arguably have offended the principle of natural justice, *nemo iudex in suam causam*. The Chamber's only concern was that the Registry's position was legally enforceable. It is, not least by reason of the multiplicity of documents signed by Mr. Bemba to that effect during the course of these proceedings.

---

<sup>44</sup> ICC-01/05-01/08-3651-US-Exp.

41. Against that background, it is unclear why the Trial Chamber felt it necessary to “instruct” Mr. Bemba to repay [REDACTED] to the Court pursuant to the arrangement outlined above. However, in Mr. Bemba’s submission, the Chamber’s intervention was premature and otiose, and, if it were intended to create some sort of condition precedent to the unfreezing of his assets, it would be unfortunate, unfair and illegal.

**(e) The Chamber has no reason to doubt that Mr. Bemba will cooperate in the repayment of monies to the Registry.**

42. Mr. Bemba has throughout cooperated with the Registry to ensure the economical and efficient management of his legal team.<sup>45</sup> He has, moreover, been candid about the location of his assets,<sup>46</sup> and has assisted, where possible, in their recovery, so that advances for his Defence could be repaid.

43. In May 2014, the Registry received a transfer of 2,067,982 euros from a bank account belonging to Mr. Bemba in Cape Verde.<sup>47</sup> An order for forfeiture or seizure not being possible, Cape Verde, *inter alia*, not being a State Party, the transfer required the cooperation of Mr. Bemba. In fact, at that time, the total of the monies advanced to his lawyers by the Registry was only 2,045, 762.<sup>48</sup> He thus repaid more monies than he in fact owed.

44. Mr. Bemba has continued to work cooperatively with the Registry since his acquittal and has had (through his representatives) various meetings and conversations concerning the financial situation with relevant officials, culminating

---

<sup>45</sup> For example, during the appeal phase of the case, the size of the team was reduced substantially during certain periods of low activity, with appropriate reductions in cost. The salaries payable to Messrs. Kilolo and Mangenda were not for several months redistributed, after they ceased to be part of the team.

<sup>46</sup> It is of note that the most substantial item on the schedule of assets was not traced by the authorities, but rather disclosed by Mr. Bemba in an interview in 2009.

<sup>47</sup> ICC-ASP/13/20, Assembly of States Parties to the Rome Statute of the International Criminal Court Thirteenth Session, New York, 8-17 December 2014, para. 36.

<sup>48</sup> *Ibid.*

in a meeting on 8 August 2018, at which an application for the unfreezing of his assets was canvassed and Mr. Bemba's current financial position outlined.

**(f) [REDACTED] should be returned forthwith**

45. [REDACTED]

46. [REDACTED],<sup>49</sup> [REDACTED]

47. [REDACTED]

**(g) Mr. Bemba is entitled to have access to all filings, orders and accounts relating to his finances and the freezing of his assets**

48. A great many of the filings and decisions pertaining to the freezing of Mr. Bemba's assets and his general financial situation have been made under seal and/or *ex parte*.

49. The justification for that classification no longer exists. This matter has now to be approached on the basis that the Court, and various states and institutions have interfered with the proprietary interests of an innocent man and dealt with his property and assets as trustees.

50. Those who have dealt with his property are under a fiduciary duty properly to account for their dealings with those assets. In any system of justice, Mr. Bemba would now be entitled to an order of account in relation to all items of property traced, identified, seized or frozen. The most cursory examination of the schedule of assets in the updated report on Mr Bemba's assets suggests that the court and the states have not performed this duty with adequate or any care and attention.<sup>50</sup>

**(h) The obligations of the Court, the parties and relevant states**

---

<sup>49</sup> ICC-01/05-01/08-3650-Conf-Exp-Anx.

<sup>50</sup> *Ibid.*, paras 45 and 46

51. Mr. Bemba was acquitted on 8 June 2018. In a perfect world, the Appeals Chamber should have made orders relating to the freezing of his assets *eiusdem generis* to those sought herein. Its failure to do so in no way absolves the states of their fiduciary duties nor the Court of its obligation to ensure that it was behaving within its statutory and regulatory powers, and that it was not requiring states to act unlawfully.

52. Those obligations fall not just on the Chambers who had made these requests, but on the organs of the Court who requested those orders and who, through their relationship with the states, managed them. The states, themselves, moreover, had an obligation to analyze and review the legality of their own actions. Mr. Bemba's acquittal was a worldwide news event. No state can have failed to be aware of it and thus be on notice that events had brought sharply into focus the legality of their behaviour in continuing to freeze Mr. Bemba's assets.

53. On the other hand, through the use of under seal and *ex parte* procedures, the detail and effect of the various freezing orders have been substantially obscured from Mr. Bemba's gaze. Even now, he is unable precisely to identify the requests, decisions and property concerned. As has been repeated herein, freezing another person's property creates fiduciary duties to account for it. It is not, nor was it, Mr Bemba's obligation to trace and identify his own property, nor to point out and protest about the continuing illegality involved in the freezing of his assets. Neither was it his obligation to do so hastily. Obfuscation and obstruction on the part of those who directed and managed these orders is further misfeasance on their part, not oversight on his.

#### **E. REQUESTED RELIEF**

54. For the reasons outlined above, Mr. Bemba, therefore requests that the Trial Chamber :



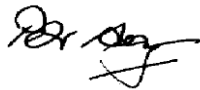
**RECLASSIFY** all under seal and/or or *ex parte* filings, orders or decisions in the instant case concerning requests for cooperation to freeze Mr. Bemba's assets, to be made available to Mr. Bemba;

**ORDER** each of the states which has imposed protective measures or freezing orders over the property of Mr. Bemba to provide an account in relation to each item of property frozen, identifying the same, specifying its precise location, and detailing at a minimum, its value throughout the period of its detention by the state or institution;

**ORDER** that the Registry respond to the specific request for [REDACTED], within 48 hours of the filing of this request; and

**ORDER** that [REDACTED].

The whole respectfully submitted.



Peter Haynes QC  
Lead Counsel of Mr. Jean-Pierre Bemba

Done at The Hague, The Netherlands, 30 October 2018