

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

*Original: English*

No.: ICC-01/05-01/08  
Date: 7 December 2018

**TRIAL CHAMBER III**

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

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC**

**IN THE CASE OF  
THE PROSECUTOR *v.* JEAN-PIERRE BEMBA GOMBO**

**Public**

**Public Redacted Version of "Registry's Observations on the Defence Request for  
Reclassification of Information relating to Mr Jean-Pierre Bemba Gombo's  
Assets", 3 September 2018**

**Source: Registry**

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

**The Office of the Prosecutor**

**Counsel for the Defence**

Mr Peter Haynes

Ms 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**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

Mr Ennis McBride, Financial Investigator

## I - Introduction

1. Pursuant to Trial Chamber III's ("Chamber") decision on 24 August 2018,<sup>1</sup> the Registry submits its observations on the request for reclassification of information relating to Mr Jean-Pierre Bemba Gombo's assets ("Request" and "Mr Bemba", respectively)<sup>2</sup> filed by the defence for Mr Bemba ("Defence").
2. The Registry opposes the reclassification of *all* under seal and *all ex parte* documents pertaining to Mr Bemba's frozen assets. This is, *inter alia*, due to 1) the amount Mr Bemba owes the Court (€1,886,736.87), [REDACTED],<sup>3</sup> 2) the information already available to the Defence with regard to Mr Bemba's frozen assets which are estimated at [REDACTED],<sup>4</sup> and 3) the Defence's submission that the Chamber "has no cause to doubt Mr. Bemba's *bona fides*" to pay his outstanding debt.<sup>5</sup> Additional reasons for opposing the Request are set out in the below submission.

## II - Classification

3. In accordance with regulation 23 *bis*(2) of the Regulations of the Court, the present submission is classified as under seal *ex parte* only available to the Registry as it refers to the Chamber's cooperation requests and related Registry's reports with that same level of classification. A redacted version of this submission is made available to the Defence.

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<sup>1</sup> Trial Chamber III, "Decision on the Defence's preliminary application for reclassification of filings disclosure, accounts and partial unfreezing of Mr Bemba's assets", 24 August 2018, ICC-01/05-01/08-3655-US-Exp.

<sup>2</sup> Defence, "Preliminary application for reclassification of filings, disclosure, accounts and partial unfreezing of Mr Bemba's assets" ("Request"), 16 August 2018, ICC-01/05-01/08-3654-Conf-Exp, para. 25.

<sup>3</sup> Trial Chamber III, "Public redacted version of 'Order in relation to advanced legal assistance fees'", 17 July 2018, ICC-01/05-01/08-3651-Red.

<sup>4</sup> Registry, "Registry's Report on Mr Jean-Pierre Bemba Gombo's Solvency and Conduct while in Detention", 22 April 2016, ICC-01/05-01/08-3375 and Registry, "Registry's Updated Solvency Report on Mr Jean-Pierre Bemba Gombo's assets", 16 July 2018, ICC-01/05-01/08-3650-Conf-Exp-Anx.

<sup>5</sup> Defence, Request, para. 25.

### III – Submissions

#### *Registry's observations on the request for reclassification*

4. The Defence seeks the reclassification of all under seal and/or *ex parte* filings, orders, and decisions concerning requests for cooperation to freeze Mr Bemba's assets so as to be available to him. The Defence maintains that Mr Bemba is "entitled" to an accurate overview of the cooperation requests submitted to relevant states and orders made to freeze his assets.<sup>6</sup> Accordingly, the Defence requests as well that each of the relevant states which has imposed protective measures over Mr Bemba's assets be ordered 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".<sup>7</sup>

5. Whereas the lifting of the freezing orders imposed on Mr Bemba's assets may be, in the Defence's view, a prerequisite for him to pay his debt to the Court, the Registry fails to see how a full reclassification exercise is necessary. The reclassification of all requested documents has no bearing on Mr Bemba's ability to pay his debt, particularly if Mr Bemba is *willing* to pay that debt.<sup>8</sup> The reasons such a reclassification is unnecessary are detailed below.

6. Firstly, the Registry recalls that the total estimated amount of Mr Bemba's assets as of 16 July 2018 was [REDACTED].<sup>9</sup> This recent estimate is based on information communicated by or otherwise shared with the Defence.<sup>10</sup> The Registry further notes Mr Bemba's acknowledgment that he has a contractual relationship with the Court and still needs to repay the Court €1,886,736.87, as

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<sup>6</sup> Defence, Request, para. 3.

<sup>7</sup> Defence, Request, para. 54.

<sup>8</sup> Defence, Request, paras. 23 and 25 and *see also* [REDACTED] executed pursuant to the Decision on legal assistance, ICC-01/05-01-08-567-Red, para. 111(iv).

<sup>9</sup> Registry, "Registry's Updated Solvency Report on Mr Jean-Pierre Bemba Gombo's assets", 16 July 2018, ICC-01/05-01/08-3650-Conf-Exp-Anx.

<sup>10</sup> *Ibid.*

instructed by the Chamber.<sup>11</sup> [REDACTED]. The Defence already has ample information at hand to formulate specific applications for lifting the seizure or freezing orders on targeted assets before the Chamber. [REDACTED]. Therefore, reclassifying *all* documents exchanged between the Court and the relevant states would not help the Defence file the said applications for lifting.

7. Secondly, the requests for cooperation that are based on articles 57(3)(e) and 93(1)(k) of the Rome Statute (“Statute”) were initially issued by the Chamber at the Prosecution’s request in the context of arrest proceedings. The Appeals Chamber, in its final judgment acquitting Mr Bemba, did not make any determination on the protective measures imposed on his assets or on the status of the related outstanding cooperation requests. In the absence of such a determination, if it is considered *in fine* - as the Defence submits<sup>12</sup> - that the basis for such requests no longer exists following Mr Bemba’s acquittal, it would logically follow that the execution of these requests will not take place. Consequently, the protective measures taken at the national level would be null and void. Therefore, the reclassification of all under seal *ex parte* cooperation requests and of all related documents would serve no purpose at this stage.
8. Thirdly, for their reclassification to take place the Registry would need to consult with all relevant states, which are the authors of documents provided in execution of all cooperation requests on a confidential basis pursuant to article 93(8)(a) of the Statute. These consultations are not only unnecessary but also tremendously time-consuming due to the vast amount of documents exchanged during more than 10 years of cooperation between the Court and several states.
9. [REDACTED]

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<sup>11</sup> Trial Chamber III, “Public redacted version of Order in relation to advanced legal assistance fees”, 17 July 2018, ICC-01/05-01/08-3651-Red.

<sup>12</sup> Defence, Request, para. 2.

*Further observations on the Defence Request*

10. The Registry recalls that its active involvement in the asset recovery matters in this case is only due to its specific role - given to it by the Chamber - to implement the “Decision of legal assistance for the accused” (“Decision”).<sup>13</sup> In this regard, the Registry observes that two of the Defence’s assertions in the Request may be clarified for the Chamber to have a full overview of the current status of Mr Bemba’s assets.
11. The first clarification concerns the sequence of events relating to [REDACTED] mentioned by the Defence at paragraph 18 of the Request.
12. This refers to the villa located in [REDACTED] (Portuguese Republic). By order (iii) in the Decision, the Chamber requested the Registry to obtain from Mr Bemba a “legally binding power of attorney and power of the sale in favour of the Registrar over his villa”.<sup>14</sup> [REDACTED]. [REDACTED]<sup>15</sup> As a result, the Chamber’s order (iii) was lifted.<sup>16</sup> Consequently, the Registry staff decided not to pursue the possibility of selling Mr Bemba’s villa.
13. The second clarification concerns the amount of 2,067,982 euros received by the Court in May 2014 thanks to the cooperation between the Court and Cape Verde, a State Party to the Statute.<sup>17</sup> The Registry notes that the Defence’s reference to documents presented to the Assembly of State Parties seems incorrect.<sup>18</sup> In addition, Mr Bemba submits that “[H]e (...) repaid more monies than he in fact

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<sup>13</sup> Trial Chamber III, “Redacted version of Decision on legal assistance for the accused”, 26 November 2009, ICC-01/05-01/08-567-Red.

<sup>14</sup> Trial Chamber III, Decision, 20 October 2009, ICC-01/05-01/08-567-Red, para. 111(iii).

<sup>15</sup> [REDACTED]

<sup>16</sup> Trial Chamber III, “Redacted version of the ‘Decision on the defence application to lift Order iii) of the ‘Decision on legal assistance for the accused dated 20 October 2009’”, 19 November 2009, ICC-01/05-01/08-596-Red, para. 15.

<sup>17</sup> Cape Verde ratified the Rome Statute on 10 October 2011.

<sup>18</sup> Defence, Request, footnotes 47 and 48. The Defence may have referred to 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, Vol II, paragraph 271, page 76.

owed” to the Court at the time the amount of 2,067,982 euros was received from Cape Verde.<sup>19</sup> The Registry clarifies that at the said time, according to the Registry’s financial records, the Court had advanced to Mr Bemba the amount of 2,277,270.61 euros.



Marc Dubuisson, Director, Division of Judicial Services

On behalf of Peter Lewis, Registrar

Dated this 7 December 2018

At The Hague, the Netherlands

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<sup>19</sup> Defence, Request, para. 43.