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

Date: 10/12/2018

**TRIAL CHAMBER III**

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

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC**

*Public Redacted*  
*With confidential EX PARTE Annexes A, B and C*

**Public Redacted Version of “Urgent request for partial reconsideration and associated orders”**

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

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

Counsel for Mr. Jean-Pierre Bemba  
Gombo  
Peter Haynes, QC  
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Legal Representatives of the Victims

The Office of Public Counsel for the Victims	The Office of Public Counsel for the Defence
	Xavier-Jean Keita

**REGISTRY**

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Registrar  
Peter Lewis

## A. INTRODUCTION

1. In the 22 days since Trial Chamber III's "Decision on Mr Bemba's preliminary application for reclassification of filings, disclosure, accounts, and partial unfreezing of Mr Bemba's assets and the Registry's Request for guidance",<sup>1</sup> not one of the assets (whether in the name of Mr Bemba or somebody else) in Portugal, Belgium, or the Democratic Republic of Congo ("the States") has been returned to its owner. Mr. Bemba has received no direct communication from the States, nor indeed are any of them apparently prepared to entertain such communication. The Registry of the ICC has, belatedly, informed the states of the Chamber's decision, although the substance of that communication has not been notified to Mr. Bemba. Moreover, apart from forwarding letters from Mr. Bemba to each of the states concerned, the Registry's assistance to him has been limited and ineffectual, for which relief is sought below.

2. In Mr. Bemba's submission, especially given the urgency of the current situation, the effective *impasse* in the unfreezing of his assets, and the fact that almost five months have now lapsed since his acquittal, the Chamber ought now partially to reconsider its 18 October decision and/or grant the relief sought herein.

3. Leaving aside the fact that Mr. Bemba still does not have possession of his property, he still lacks the information which the Trial Chamber deemed necessary for him to trace it and effect repossession of it.

4. To clarify, Mr. Bemba is not in possession of basic information such as (i) which assets have been seized and frozen by the States following orders by the ICC, (as opposed to seized by States independently of an ICC order); which assets have been seized directly by organs of the ICC;<sup>2</sup> and which have been otherwise destroyed, looted, or occupied by third parties following his arrest; (ii) the identity of provisional administrators or trustees appointed to manage them (either on a temporary or permanent basis); (iii) the current physical and legal status of the frozen property; and (iii) the physical location of items of moveable property. Without this information, the process of seeking the lifting of freezing orders becomes infinitely more difficult.

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<sup>1</sup> ICC-01/05-01/08-3660-US-Exp-Red, dated 18 October 2018.

<sup>2</sup> See, for example, ICC-01/05-01/08-3650-Conf-Exp-Anx.

5. The difficulty is perhaps best illustrated by way of a concrete example. The Chamber rejected Mr. Bemba's request for the Court's assistance in "tracing his own assets", because "it was Mr. Bemba who made the decision as to the location of his assets" and he is "best placed to identify where his assets are located".<sup>3</sup> Evidently, Mr. Bemba has knowledge of where houses are located, and in which states he holds bank accounts. Post-May 2008, however, he is in no position to know their legal status, nor be able to trace when and by whom they were interfered with (whether lawfully or otherwise), and what steps should therefore be taken to secure their return.

6. Take, for example, Mr. Bemba's property in the DRC. In the Registry's Updated Solvency Report on Mr Jean-Pierre Bemba Gombo's assets,<sup>4</sup> provided to Trial Chamber III on 16 July 2018, the Registry acknowledges that it is "not know" whether property [REDACTED] has been frozen [REDACTED]. Mr. Bemba is similarly in the dark. He has received reports that [REDACTED]. He is ignorant as to whether this property remains frozen on the basis of orders from the ICC; or was seized by the DRC authorities independently of an ICC order; or is currently occupied by other unknown third parties unrelated to the Court.

7. This information is essential to taking any next steps. If a house is being illegally occupied by a third party with no legal claim to it, Mr. Bemba can engage lawyers and seek an injunction to have that person removed. If the house is being frozen on the basis of an ICC freezing order, and being managed by an administrator or trustee pursuant domestic law and practice, Mr. Bemba has no current right to reclaim the property until other legal steps are taken. Put simply, he needs information. Much of this information is contained within Mr. Bemba's ICC casefile, in filings still classified as confidential and *ex parte*.

8. On 18 October 2018, Trial Chamber III rejected Mr. Bemba's request to "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," finding that reclassification was not appropriate "at this point",<sup>5</sup> and "particularly on the significant scale that has been requested."<sup>6</sup> Mr. Bemba has now identified specific documents and filings for which reclassification is warranted, for the reasons set out herein.

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<sup>3</sup> ICC-01/05-01/08-3660-US-Exp-Red, para. 17.

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

<sup>5</sup> ICC-01/05-01/08-3660-US-Exp-Red, para. 17.

<sup>6</sup> ICC-01/05-01/08-3660-US-Exp-Red, para. 17.

He therefore brings the present, more particularised application seeking access to identified filings, and other relevant information in the possession of the Court, to assist him in the task of seeking to regain access to his personal property.

9. Secondly, the Trial Chamber based its decision not to reclassify documents *en masse* on the fact that the information requested was “either considered to be known by Mr Bemba, or can be obtained from States directly, through other means.” The events of the intervening weeks warrant reconsideration of this specific aspect of the Trial Chamber’s decision. Firstly, the competent authorities within the governments of Portugal, the DRC, and Belgium, have indicated through the ICC Registry that they are unwilling to engage in correspondence or contact with either Mr. Bemba or his counsel.<sup>7</sup> Urgent letters sent to the competent authorities through the Registry asking that (i) information concerning efforts to unfreeze assets be provided by 2 November 2018, and (ii) that the relevant contact person(s) meet or speak with Mr. Bemba’s counsel,<sup>8</sup> have elicited no substantive responses.<sup>9</sup>

10. Mr. Bemba does not have the ability to obtain information from States directly, as the Chamber premised.<sup>10</sup> Given that much of the same information that Mr. Bemba could apparently obtain from States is within the possession of the Court, Mr. Bemba brings the present application on the basis of “a specific need”<sup>11</sup> to provide him with critical pieces of the puzzle.

11. With financial harm continuing to accrue, the situation is evidently one of some urgency. As the Trial Chamber is aware, freezing orders are jeopardising Mr. Bemba’s ability to remain in the country in which he wishes to reside with his family, given that proof of a bank account with available funds is a pre-requisite to an application for residency.<sup>12</sup> As such, Mr. Bemba files the present urgent application for partial reconsideration and for the

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<sup>7</sup> Email from the Registry to Mr. Bemba’s counsel, dated 26 October 2018 at 14:45. Email from the Registry to Mr. Bemba’s counsel, dated Wednesday 7 November 2018 at 16:02 (Confidential *EX PARTE* Annex A).

<sup>8</sup> Email from Mr. Bemba’s counsel to the Registry, attaching three letters for Belgium, Portugal and the DRC, dated Tuesday 30 October 2018 at 10:48 (Confidential *EX PARTE* Annex A).

<sup>9</sup> Emails from the Registry to Mr. Bemba’s counsel dated Wednesday 31 October 2018 at 11:08; Friday 2 November 2018 at 15:33; Monday 5 November 2018 at 13:21; Tuesday 6 November 2018 at 19:25; Wednesday 7 November 2018 at 16:02; and Thursday 8 November 2018 at 13:51 (responding to emails sent by Mr. Bemba’s counsel on Tuesday 30 October 2018 at 10:48; Monday 5 November 2018 at 09:11; Tuesday 6 November 2018 at 15:43; Wednesday 7 November 2018 at 10:27; Wednesday 7 November 2018 at 13:53; Wednesday 7 November 2018 at 14:04; and Thursday 8 November 2018 at 12:02) (Confidential *EX PARTE* Annexes A and B).

<sup>10</sup> ICC-01/05-01/08-3660-US-Exp-Red, para. 18.

<sup>11</sup> ICC-01/05-01/08-3660-US-Exp-Red, para. 16.

<sup>12</sup> ICC-01/05-01/08-3659-Conf-Exp-AnxB.

provision of other information in the possession of the Court, in order to assist him in regaining access to his personal property, and bring this chapter to a close.

## **B. LEVEL OF CONFIDENTIALITY**

12. The present request is filed *ex parte*, available to the Registry and Mr. Bemba. There is no other party to the present proceedings concerning the unfreezing of Mr. Bemba's assets. Moreover, the submissions herein address Mr. Bemba's private financial situation, which is confidential to former parties and participants to the concluded criminal proceedings. Thirdly, the submissions would be incomprehensible without substantial reference to matters previously the subject of decisions made under seal and *ex parte* Mr. Bemba and the Registry, and to filings that bear the same classification.

## **C. PROCEDURAL HISTORY**

13. For the procedural history relevant to the freezing of his assets, Mr. Bemba repeats and relies on paragraphs 7 to 24 of its *Preliminary application for reclassification of filings, disclosure, accounts and partial unfreezing of Mr. Bemba's assets*.<sup>13</sup>

14. On 18 October 2018, Trial Chamber III rendered its *Decision on Mr Bemba's preliminary application for reclassification of filings, disclosure, accounts, and partial unfreezing of Mr Bemba's assets and the Registry's Request for guidance*.<sup>14</sup> The Trial Chamber held that it was crucial that states were notified of relevant decisions as soon as reasonably practicable,<sup>15</sup> and encouraged the Registry "to take all necessary steps in accordance with this decision".<sup>16</sup>

15. As regards Mr. Bemba's access to documents concerning the freezing of his assets, the Trial Chamber held that classification levels should be maintained, but that "Mr Bemba has an interest to access information related to the status of his frozen assets which he cannot reasonably be expected to have himself, or for which he faces difficulties to gain access,"<sup>17</sup>

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<sup>13</sup> ICC-01/05-01/08-3654-Conf-Exp, paras. 7-24.

<sup>14</sup> ICC-01/05-01/08-3660-US-Exp-Red.

<sup>15</sup> ICC-01/05-01/08-3660-US-Exp-Red, para. 19.

<sup>16</sup> ICC-01/05-01/08-3660-US-Exp-Red, p. 14.

<sup>17</sup> ICC-01/05-01/08-3660-US-Exp-Red, para. 18.

and so encouraged the Registry to assist and facilitate Mr Bemba's queries, as appropriate and feasible, including by communicating with the States about specific issues.<sup>18</sup>

16. The following day, on 19 October 2018, counsel for Mr. Bemba emailed the Registry asking for confirmation that it had notified the States in the terms set out in Trial Chamber III's decision, or to confirm it would be done that day. Counsel also asked to be provided with the names and contact details of focal points in the relevant states for the return of Mr. Bemba's goods.<sup>19</sup> This email was followed-up with phone calls to the relevant staff within the Registry, including a verbal request to speak with the Registrar.

17. The Registry did not respond.

18. On 22 October 2018, counsel for Mr. Bemba sent a further email to the Registry asking for a response to the email of 19 October 2018.<sup>20</sup> He was informed via phone that the States would be informed on 22 October 2018 and that the delay in the sending of *Notes Verbales* had been occasioned by a need to amend them to remind the states that case ICC-01/05-01/13 ("the Article 70 case") was under appeal and thus not concluded. As set out below, the notification of States on 22 October 2018 did not occur. The same day, counsel for Mr. Bemba was provided with the names, but not contact details, of the ICC Registry's contact person within the DRC and Belgium governments. The Registry informed counsel for Mr. Bemba that it did not currently have a contact person within the Portuguese government.<sup>21</sup>

19. On 23 October 2018, counsel for Mr. Bemba asked to be provided with the contact details of the ICC contact person in each state.<sup>22</sup> On 24 October 2018, the Registry responded that these details would be provided shortly.<sup>23</sup>

20. On 24 October 2018, the Registry informed counsel for Mr. Bemba that the relevant states had been notified on 23 October at 11:10 (Portugal), on 23 October at 12:03 (Belgium), and on 24 October at 10:30 (Kinshasa time) (DRC).<sup>24</sup>

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<sup>18</sup> ICC-01/05-01/08-3660-US-Exp-Red, para. 18.

<sup>19</sup> Email dated Friday 19 October 2018 at 13:32 (Confidential *EX PARTE* Annex C).

<sup>20</sup> Email dated Monday 22 October 2018 at 08:58 (Confidential *EX PARTE* Annex C).

<sup>21</sup> Email dated Monday 22 October 2018 at 19:22 (Confidential *EX PARTE* Annex A).

<sup>22</sup> Email dated Tuesday 23 October 2018 at 14:14 (Confidential *EX PARTE* Annex A).

<sup>23</sup> Email dated Wednesday 24 October 2018 at 16:13 (Confidential *EX PARTE* Annex A).

<sup>24</sup> Email dated Wednesday 24 October 2018 at 17:32 (Confidential *EX PARTE* Annex C).

21. On 26 October 2018, the Registry informed counsel for Mr. Bemba that their contact persons in Belgium and the DRC had indicated that they were unwilling to receive any direct correspondence or enter into direct contact with Mr. Bemba or his counsel. As such, contact details would not be provided. No information was provided in relation to Portugal.<sup>25</sup>

22. On 30 October 2018, counsel for Mr. Bemba asked the Registry urgently to transmit letters to the ICC contacts in Belgium, the DRC and Portugal.<sup>26</sup> These letters requested the States to lift all freezing orders implemented at the ICC's request, whether imposed upon property belonging to Mr. Bemba or some other person or institution; to inform Mr. Bemba, through counsel, of the fact of the lifting of the orders and any practical steps he may require to take effectively to avail himself of his property; and to supply a complete list of all property frozen pursuant to the requests for assistance. A response was requested by close of business on 2 November 2018.

23. On 31 October 2018, the Registry informed counsel for Mr. Bemba that the letters had been transmitted to the Embassy of Portugal on 30 October (by hand), the Belgian authorities on 30 October (by email) and the Office of the Procureur Général of DRC on 31 October (by hand).<sup>27</sup>

24. As at the date of this filing, no substantive responses from the States have been received.

25. On 2 November 2018, the Counsel Support Section ("CSS") of the Registry informed counsel for Mr. Bemba that the Belgian authorities had acknowledged receipt of his letter dated 30 October 2018. For purposes of follow-up with Belgium, Mr. Bemba was informed he should use CSS as the designated channel of communication within the Registry, rather than the Registry's Office of Cooperation and External Relations.<sup>28</sup>

26. On 5 November 2018 at 09.11, counsel for Mr. Bemba wrote to CSS asking that the Registry convey to the Belgian authorities that Mr Bemba wished to receive a substantive

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<sup>25</sup> Email dated Friday 26 October 2018 at 14:45 (Confidential *EX PARTE* Annex A).

<sup>26</sup> Email dated Tuesday 30 October 2018 at 10:48 (Confidential *EX PARTE* Annex A).

<sup>27</sup> Email dated Wednesday 31 October 2018 at 11:08 (Confidential *EX PARTE* Annex A).

<sup>28</sup> Email dated Friday 2 November 2018 at 15:33 (Confidential *EX PARTE* Annex B).



response to his letter by close of business on 6 November. At 13.21, CSS responded to counsel appending a short passage from the communication that the Registry had received from the Belgian authorities, which read as follows:<sup>29</sup>

[REDACTED]

27. At 16.19 on 5 November 2018, counsel wrote to CSS to ask for clarification of the passage quoted from the letter, as to which case was referenced as [REDACTED].<sup>30</sup> He was informed by email at 17.12 that it was the instant case, ICC-01/05-01/08.<sup>31</sup> Therefore, on 6 November 2018, counsel for Mr. Bemba wrote inquiring of CSS [REDACTED], and enquired whether it might be possible for him to see the whole letter from the Belgian authorities. CSS responded that the inquiry had to be referred to “relevant Registry colleagues”.<sup>32</sup> After two further reminders,<sup>33</sup> CSS eventually responded on 8 November at 13.51 that the letter could not be shared with counsel and that he had received all relevant information.

28. In relation to Portugal and the DRC, counsel for Mr. Bemba wrote to the Registry on 6 November 2018 noting that the States had been asked to respond by 2 November 2019, and asking for the Registry to follow-up with their contact persons in the DRC and Portugal concerning the request to lift all freezing orders against Mr. Bemba’s assets and properties.<sup>34</sup> The same day, the Registry instructed counsel for Mr. Bemba that any enquiries in response of the DRC and Portugal should also be referred through CSS. The Registry also indicated that the Embassy of Portugal had indicated its intention to send a *Note Verbale* but that none had yet been received.<sup>35</sup>

29. Accordingly, on 7 November 2018, counsel for Mr. Bemba asked the Registry for information concerning the substance of the Portuguese response on the day by 16.00 CET, if possible, or in the alternative, to be provided with the name and contact details of the appropriate person within the embassy.<sup>36</sup> The Registry then informed counsel for Mr.

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<sup>29</sup> [REDACTED] (unofficial translation) (Confidential *EX PARTE* Annex B).

<sup>30</sup> (Confidential *EX PARTE* Annex B).

<sup>31</sup> (Confidential *EX PARTE* Annex B).

<sup>32</sup> (Confidential *EX PARTE* Annex B).

<sup>33</sup> Emails dated Wednesday 7 November 2018 at 13:53 and Thursday 8 November 2018 at 12:02 (Confidential *EX PARTE* Annex B).

<sup>34</sup> Email dated Tuesday 6 November 2018 at 15:43 (Confidential *EX PARTE* Annex A).

<sup>35</sup> Email dated Tuesday 6 November 2018 at 19:25 (Confidential *EX PARTE* Annex A).

<sup>36</sup> Email dated Wednesday 7 November 2018 at 14:04 (Confidential *EX PARTE* Annex A).

Bemba that their contact within the Portuguese government does not wish to be identified as such, and prefers no direct contact with Mr. Bemba or his counsel.<sup>37</sup> No *note verbale* has been received to date.

## D. SUBMISSIONS

### (i) The legal standard for reconsideration

30. Mr. Bemba notes that “a significant change in circumstances, or new and compelling reasons, may justify reconsideration of a decision.”<sup>38</sup> In this case, reconsideration of this specific aspect of the Trial Chamber’s decision is warranted on two grounds.

31. Firstly, in its decision, the Trial Chamber decided on a request to reclassify, *en masse*, “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”.<sup>39</sup> It held that this blanket reclassification was not appropriate “**at this point**”, with the Trial Chamber noting that “**in this instance**, Mr Bemba has not established the need for the lifting of confidentiality, **particularly on the significant scale that has been requested**.”<sup>40</sup> As such, the Trial Chamber left the door open for further requests for reclassification, particularly requests which identify with greater specificity the information and documents for which reclassification is being sought. This has now been done. The specific materials for which reclassification is being sought by way of the present application are set out below, warranting a fresh review on the part of the Trial Chamber.

32. Secondly, a central aspect of the Trial Chamber’s findings has been undermined by a significant change in circumstances, and new and compelling reasons that justify reconsideration of a specific aspect of its decision.”<sup>41</sup> The Trial Chamber was explicit that:<sup>42</sup>

it has reached this conclusion against the backdrop that the requested information is either considered to be known by Mr Bemba, **or can be obtained from States directly, through other means**, without impacting State cooperation by disclosing confidential information. While thus rejecting the Reclassification Request as such, the Chamber

<sup>37</sup> Email dated Wednesday 7 November 2018 at 16:02 (Confidential *EX PARTE* Annex A).

<sup>38</sup> ICC-01/05-01/08-3204-Conf, para. 14.

<sup>39</sup> ICC-01/05-01/08-3654-Conf-Exp, para. 54.

<sup>40</sup> ICC-01/05-01/08-3660-US-Exp-Red, para. 17 (emphasis added).

<sup>41</sup> ICC-01/05-01/08-3204-Conf, para. 14.

<sup>42</sup> ICC-01/05-01/08-3660-US-Exp-Red, para. 18 (emphasis added).

acknowledges that Mr Bemba has an interest to access information related to the status of his frozen assets which he cannot reasonably be expected to have himself...

33. The refusal of the States to correspond or communicate with either Mr. Bemba or his counsel; to respond to requests to meet or speak regarding the unfreezing assets; or even provide basic information about whether any steps have been taken to unfreeze assets, is a significant change in circumstances, warranting reconsideration. It is simply not the case that Mr. Bemba can obtain material from the States in question and, as such, the major part of the Trial Chamber's reasoning falls away, warranting reconsideration of its decision on this specific and limited point.

**(ii) Request for reclassification and other information in the possession of the Court**

**(a) Filings for which equivalent orders have been disclosed**

34. The freezing orders were issued on 23 May 2008 (Belgium), 27 May 2008 (Portugal) and 29 May 2008 (DRC).<sup>43</sup> Pre-Trial Chamber III reclassified the Portuguese freezing order as public on 14 November 2008, in a decision which references "the principle of publicity as one of the underlying tenets of fairness of the Court's proceedings."<sup>44</sup> Mr. Bemba respectfully submits that there can be no reason that the Portuguese freezing order can be in the public domain, but the orders directed at Belgium and the DRC remain confidential *ex parte*. He accordingly requests that documents ICC-01/05-01/08-2-US-Exp and ICC-01/05-01/08-9-US-Exp are also reclassified as public filings.

35. On 31 December 2008, Her Honour Judge Ekaterina Trendafilova, sitting as a single judge of Pre-Trial Chamber III, issued two requests for cooperation in the present case. The first, was a request for cooperation to the competent authorities of Portugal,<sup>45</sup> which was classified as confidential and available to Mr. Bemba. The second, was a request for cooperation to the competent authorities [REDACTED], which maintains an *ex parte* classification. [REDACTED].<sup>46</sup>

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<sup>43</sup> ICC-01/05-01/08-2-US-Exp (Mr. Bemba currently has no access) cited in ICC-01/05-01/08-37-Conf, fn. 2; ICC-01/05-01/08-8; ICC-01/05-01/08-9-US-Exp (Mr. Bemba currently has no access) cited in ICC-01/05-01/08-37-Conf, fn. 4.

<sup>44</sup> ICC-01/05-01/08-249, paras. 2, 27, 29(b).

<sup>45</sup> ICC-01/05-01/08-339-Conf.

<sup>46</sup> ICC-01/05-01/08-T-13-CONF-ENG CT, p. 60.

36. Mr. Bemba respectfully submits that there can be no reason that the request for cooperation to the competent authorities of Portugal is available to him, but the contents of the request for cooperation [REDACTED] remains confidential *ex parte*. He accordingly requests that document ICC-01/05-01/08-340-US-Exp be reclassified as a confidential filing.

**(b) Other identified documents referenced in available filings**

37. The Bemba casefile is replete with “missing” filings. The list of filing references is notable for the number of sequential numbers which are skipped over, meaning, presumably, filings and decisions which are unavailable to Mr. Bemba.

38. From an ongoing review of the casefile, Mr. Bemba has been able to identify, thus far, documents which are referenced in other filings available to him and which are directly relevant to the freezing of his assets, namely:

- ICC-01/05-01/08-19-US-Exp, [REDACTED]
- ICC-01/05-01/08-52, [REDACTED]
- ICC-01/05-01/08-62-Conf-Exp, [REDACTED]
- ICC-01/05-01/08-299-Conf-Anx, [REDACTED]
- ICC-01/05-01/08-491-US-Exp, [REDACTED]
- ICC-01/05-01/08-581-US-Exp, [REDACTED]

39. Mr. Bemba requests that these documents, and any annexes thereto, be reclassified as confidential to allow him a fuller picture to be able to identify the property and assets that were seized or frozen by states (as opposed to seized by organs of the ICC or otherwise destroyed or assumed by individuals having no link to the Court), and the appropriate steps that need to be taken to regain access to them.

**(c) Names of administrators appointed to manage Mr. Bemba’s assets**

40. In the Portuguese freezing order, on 27 May 2008,<sup>47</sup> Pre-Trial Chamber II made the following request of the Portuguese authorities:<sup>48</sup>

c) demande à la République portugaise de communiquer le cas échéant à la Chambre les nom et adresse de tout administrateur provisoire éventuellement désigné conformément à sa loi nationale pour gérer, pendant le déroulement de la procédure devant la Cour, les biens et avoirs de M. Jean-Pierre Bemba Gombo qui auraient été gelés ou saisis

41. Although without access to the equivalent filings for Belgium and the DRC, it appears safe to assume that the same request was made to the competent authorities in those states. Indeed, within most, if not all domestic jurisdictions, the appointment of a receiver or administrator for assets the subject of a freezing order is commonplace, if not mandatory.

42. Details of the provisional administrators who were appointed to manage the frozen or seized property during the proceedings before the Court is directly relevant to numerous issues with which Mr. Bemba is now concerned, including which assets were frozen, when and by whom, how these assets were managed (if at all), and with whom he should be liaising as regards assistance in their unfreezing. As such, Mr. Bemba respectfully requests that all information given to the Court concerning provisional administrators who were appointed in accordance with national law to manage his property be provided forthwith.

#### **(d) Relevant correspondence with States**

43. The Trial Chamber's decision of 18 October 2018 "stresses that ongoing communications and coordination between the Registry and States in relation to requests for freezing or seizure are necessary **throughout the entire proceedings**, due to the exceptional continuous nature of these requests".<sup>49</sup>

44. Of course, this is correct. There is no doubt that correspondence files within the ICC Registry and the offices of the States contain information which would greatly assist Mr. Bemba in the process of tracing and identifying the legal status of the property taken from

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<sup>47</sup> ICC-01/05-01/08-8.

<sup>48</sup> ICC-01/05-01/08-8, para 8(c): Requests the Portuguese Republic to provide the Chamber, if necessary, with the name and address of any provisional administrator who may be appointed in accordance with its national law to manage, during the course of the proceedings before the Court, the frozen or seized property and assets of Mr. Jean-Pierre Bemba Gombo (unofficial translation).

<sup>49</sup> ICC-01/05-01/08-3660-US-Exp-Red, para 14 (emphasis added).

him at the time of his arrest. Mr. Bemba is cognisant of “the integral nature of the cooperation regime under Part 9 of the Statute to the effective functioning of the Court” and that “central to that regime is the relationship of trust between the Court and States Parties and the need for confidentiality communication of requests and responses.”<sup>50</sup> However, Trial Chamber III held that this confidentiality is “not absolute” when it is demonstrated that there is “a specific need for action to be taken”.<sup>51</sup>

45. The unfreezing of Mr. Bemba’s assets has all the hallmarks of a process that will be drawn out for months, if not years, at further financial cost to Mr. Bemba, and further expenditure of resources on the part of the ICC and the States in question. This should be avoided. Mr. Bemba’s property was frozen as a result of orders of Chambers of the ICC, following requests from the ICC Office of the Prosecutor. His timely and consistent attempts to unfreeze assets across multiple jurisdictions, in order to mitigate the ongoing economic harm being suffered by their continued application, should be supported in full by the institution which has placed him in this position. This assistance should include giving him access, with appropriate redactions as strictly necessary, to the correspondence in the possession of the Registry with Portugal, the DRC and Belgium, concerning the seizure and freezing of his assets.

46. In the alternative, the Registry should be instructed to identify material in its possession, including and not limited to correspondence with States, which contains information relevant to:

- i. Which assets are (or have at any time been) frozen, by which entities, and on what dates?
- ii. The legal basis for the seizure or freezing of Mr. Bemba’s assets, including any national legal processes put in place to effect the ICC freezing orders;
- iii. The details of any provisional administrators, trustees, or receivers who have been charged with responsibility for the management of any of Mr. Bemba’s seized assets;

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<sup>50</sup> ICC-01/05-01/08-3660-US-Exp-Red, para. 16.

<sup>51</sup> ICC-01/05-01/08-3660-US-Exp-Red, para. 16.

- iv. The respective responsibilities of the ICC and the States for management of the frozen assets; and
- v. The States' continuing obligations to maintain freezing orders, especially in the light of Mr. Bemba's acquittal on 8 June 2018, and the decision of Trial Chamber III on 18 October 2018.

47. Without information, the process of unfreezing Mr. Bemba's assets will simply stall, and financial harm will continue to accrue. There is a "specific need for action to be taken", warranting the lifting of the confidentiality of correspondence between the Registry and the States for this specific and limited purpose.

**(e) Information and materials concerning pending requests for assistance in case ICC-01/05-01/08**

48. The case against Mr. Bemba at the ICC concluded on 8 June 2018.<sup>52</sup>

49. As noted above, on 6 November 2018, in response to a further request from counsel for Mr. Bemba for information from the Belgian authorities, CSS responded by providing an extract from correspondence from ICC's focal point within the Belgian government, which stated:<sup>53</sup>

[REDACTED]

50. CSS will not inform Mr. Bemba which, if any, [REDACTED] could interfere with the unfreezing of his assets,<sup>54</sup> although it did confirm [REDACTED].

51. This is a persuasive example of the difficulties faced by Mr. Bemba because of the volume of material and information to which he does not have access, which is directly relevant to his efforts to regain access to his property and assets. If the ICC has issued [REDACTED], it appears particularly counter-productive to the interests of all involved to

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<sup>52</sup> ICC-01/05-01/08-3636-Conf; ICC-01/05-01/08-3637.

<sup>53</sup> Email dated Monday 5 November 2018 at 13:21:[REDACTED] (emphasis added) (unofficial translation) (Confidential *EX PARTE* Annex B).

<sup>54</sup> Email from CSS to Mr. Bemba's counsel, dated Thursday 8 November 2018 at 13:51 (Confidential *EX PARTE* Annex B).

keep these from him. Accordingly, and in light of Trial Chamber III's caution that "States must at all times be made aware that the cooperation obligation under Article 86 of the Statute would not be applicable to such requests [concerning the repayment of advanced legal fees]",<sup>55</sup> Mr. Bemba seeks an order that [REDACTED] be provided forthwith.

**(iii) Request for an order that appropriate channels within the Registry be employed to assist and facilitate Mr. Bemba's queries**

52. CSS is the "focal point" for "the appointment of counsel" for accused persons before the Court; the administration of the "legal aid system" for accused persons before the Court; and is charged with providing "administrative and logistical support for the defence".<sup>56</sup>

53. As regards the unfreezing of Mr. Bemba's assets, there is no accused person before the Court, nor are lawyers assigned to represent an accused in proceedings in this jurisdiction, nor is there any question of the appropriate implementation of the Court's legal aid scheme. CSS's stated mandate is, therefore, effectively irrelevant to the present situation in Mr. Bemba, uniquely, finds himself.

54. Also within the Registry, there exists an Office of Cooperation and External Relations, with a designated "Cooperation and External Relations Officer". It is the staff within this section who have, *inter alia*, delivered *Notes Verbales* purporting to comply with the Trial Chamber's decision of 18 October 2018;<sup>57</sup> delivered Mr. Bemba's urgent requests to the States;<sup>58</sup> and purported to have contact with, and maintain a list of the relevant "ICC focal points" in question.<sup>59</sup>

55. The instructions to Mr. Bemba to direct all enquires through CSS, received in respect of Belgium on 2 November and the DRC and Portugal on 6 November,<sup>60</sup> effectively puts an additional barrier between Mr. Bemba and attempts to facilitate enquiries with the States. There is no apparent basis for elongating the channels of communication, other than to complicate and frustrate the process. CSS does not enjoy the same direct line to ICC focal

<sup>55</sup> ICC-01/05-01/08-3660-US-Exp-Red, para. 20.

<sup>56</sup> <https://www.icc-cpi.int/iccdocs/PIDS/publications/DefenceEng.pdf>.

<sup>57</sup> Confidential *EX PARTE* Annex B.

<sup>58</sup> Confidential *EX PARTE* Annex A.

<sup>59</sup> Confidential *EX PARTE* Annex A.

<sup>60</sup> Confidential *EX PARTE* Annexes A and B.



points, and Mr. Bemba's requests for information are necessarily stalled by CSS's need to "consult with Registry colleagues" who have the competence and mandate to take decisions on these questions.<sup>61</sup>

56. The limits of CSS's role, and its inability to fulfil the incongruous mandate now arbitrarily ascribed to it, prompt the present request to the Trial Chamber to order the Registry to give full effect to its encouragement to assist and facilitate Mr. Bemba's communication with the States, through the arm of the Registry empowered and capable to do so.

## **E. CONCLUSION**

57. Mr. Bemba seeks the expedient resolution of the question of his assets, but is without the information he needs to do so. The current application seeks nothing more than that; the provision of information through the reclassification or disclosure of specifically identified material which is directly relevant to the central questions of which assets were frozen, by whom, and what has happened to them in the intervening decade. He also asks that the Registry be ordered to give full effect to the Trial Chamber's encouragement that it "assist and facilitate Mr Bemba's queries, as appropriate and feasible, including by communicating with the relevant States about specific issues"<sup>62</sup> by allowing Mr. Bemba to liaise directly with the section of the Registry able to do so.

58. It is an understatement to posit that the Court's delay of four months in taking any steps to assist in the unfreezing of his assets was unfortunate. Any impression, justified or otherwise, of a deliberate attempt on the part of the Court to keep Mr. Bemba in the dark as to how his assets have been dealt with during the decade of his incarceration, should be avoided.

59. In any domestic application, there can be no doubt that all applications, orders and accounts would be disclosable in any motion for discharge of a freezing order at a national level, following an acquittal. As acknowledged by Trial Chamber III, no blanket prohibition exists in the practice of the ICC on disclosure of correspondence with, or requests issued to,

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<sup>61</sup> Email from CSS dated Tuesday 6 November 2018 at 13:39 (Confidential EX PARTE Annex B).

<sup>62</sup> ICC-01/05-01/08-3660-US-Exp-Red, para. 18.

states. Requests on behalf of Mr. Bemba to the States have produced nothing.<sup>63</sup> The Trial Chamber's decision of 18 October 2018 has had no practical effect. The current situation litigates in favour of reclassification, transparency, and all parties acting in good faith. As such, Mr. Bemba respectfully requests that the Trial Chamber:

**ORDER** the reclassification of ICC-01/05-01/08-2-US-Exp and ICC-01/05-01/08-9-US-Exp as public filings;

**ORDER** the reclassification of ICC-01/05-01/08-340-US-Exp as a confidential filing;

**ORDER** the reclassification of ICC-01/05-01/08-19-US-Exp; ICC-01/05-01/08-52; ICC-01/05-01/08-62-Conf-Exp; ICC-01/05-01/08-299-Conf-Anx; ICC-01/05-01/08-491-US-Exp; and ICC-01/05-01/08-581-US-Exp as confidential filings;

**ORDER** that all information regarding the names and addresses of provisional administrators who were appointed in accordance with national law to manage his property and assets be provided to Mr. Bemba as soon as practicable;

**ORDER** that the Registry provide Mr. Bemba with its correspondence and other exchanges with States which concern the seizure and freezing of his assets, with redactions as strictly necessary; or, in the alternative

**ORDER** that the Registry urgently review all correspondence and other exchanges with States concerning the freezing and seizure of Mr. Bemba's assets with a view to identifying which are relevant to the questions in paragraph 46 above, to be provided to Mr. Bemba as soon as practicable;

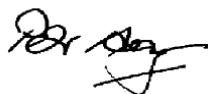
**ORDER** the disclosure of [REDACTED], if any; and

**ORDER** that appropriate channels within the Registry be employed to assist and facilitate Mr. Bemba's queries.

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<sup>63</sup> See Procedural History above and Confidential *EX PARTE* Annexes A and B).

The whole respectfully submitted.

A handwritten signature in black ink, appearing to read 'Peter Haynes', with a stylized flourish at the end.

Peter Haynes QC

Lead Counsel for Mr. Jean-Pierre Bemba

Done at The Hague, The Netherlands, 10 December 2018