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

Date: **28 July 2016**

**TRIAL CHAMBER III**

**Before:** Judge Joyce Aluoch, Presiding Judge  
Judge Geoffrey Henderson  
Judge Chang-ho Chung

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

**Public Redacted Document**

**Public redacted version of "Prosecution's Response to Defence Application for the Lifting of Seizure", 19 September 2008, ICC-01/05-01/08-110-Conf**

**Source:** The Office of the Prosecutor

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

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**REGISTRY**

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**Registrar**

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**Counsel Support Section**

**Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations Other Section**

## I. Request for Confidentiality

1. The Prosecution requests that this document be received as “Confidential”, as the decision to which it is responding has been filed as confidential.<sup>1</sup>

## II. Procedural History

2. On 9 May 2008, the Prosecution filed the “Prosecutor’s Application for Warrant of Arrest under Article 58”<sup>2</sup> of the Rome Statute (hereinafter “Prosecutor’s Application for Warrant of Arrest”), with annexes in which it requested the issuance of a warrant.

3. On 21 May 2008, the Pre-Trial Chamber III (hereinafter “PTC III”) rendered the “Decision Requesting Additional Information in Respect of the Prosecutor’s Application for Warrant of Arrest under Article 58 of the Statute”<sup>3</sup> whereby it requested the Prosecutor to provide additional information and supporting material on various aspects of his earlier application.

4. On 23 May 2008, the PTC III issued a warrant of arrest<sup>4</sup> and the “Demande d’arrestation provisoire de M. Jean-Pierre Bemba Gombo adressée au Royaume de Belgique”<sup>5</sup> (hereinafter “first arrest warrant”) requesting the provisional arrest and detention of Mr. Bemba by Belgian authorities.

5. On 24 May 2008, the warrant of arrest was executed by the authorities of the Kingdom of Belgium.

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<sup>1</sup> ICC-/05-01/08-88-Conf

<sup>2</sup> ICC-01/05-01/08-26-US-Exp

<sup>3</sup> ICC-01/05-01/08-27

<sup>4</sup> ICC-01/05-01/08-1

<sup>5</sup> ICC-01/05-01/08-3

6. On 27 May 2008, the Prosecutor submitted additional information and supporting material in “Prosecution’s Further Submission”<sup>6</sup>.

7. On 10 June 2008, PTC III issued a second warrant of arrest for Mr. Bemba replacing the first arrest warrant when it rendered its “Decision on the Prosecutor’s Application for a Warrant of Arrest against Jean-Pierre Bemba Gombo”<sup>7</sup> and issued a request for the arrest and surrender of Mr. Bemba to the Kingdom of Belgium.<sup>8</sup>

8. After his transfer to The Hague on 3 July 2008, Mr. Bemba made his first appearance before PTC III on 4 July 2008.<sup>9</sup>

9. On 23 July 2008, counsel for Mr. Bemba applied for Mr. Bemba’s interim release.<sup>10</sup> On 20 August 2008, PTC III issued its “Decision on application for interim release”<sup>11</sup> and dismissed the defence application. The Defence appealed that Decision. The Prosecution filed the “Prosecution’s Response to the Defence Document in Support of Appeal against the “Decision on application for interim release”<sup>12</sup> on 1 September 2008 and the Appeals Chamber has not yet rendered its decision.

10. On 25 August 2008, the Registrar issued its Public “*Décision du Greffier sur la demande d’aide judiciaire aux frais de la Cour déposée par M. Jean-Pierre Bemba Gombo avec Annexes Confidentielles Ex Parte Réservées au Greffe et à la Défense*”<sup>13</sup> (hereinafter “Registrar’s Provisional Decision”) in which it refused Mr. Bemba’s

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<sup>6</sup> ICC-01.05-01/08-29-US-Exp

<sup>7</sup> ICC-01/05-01/08-15

<sup>8</sup> ICC-01/05-01/08-16

<sup>9</sup> ICC-01/05-01/08-T-3-ENG ET WT, p. 1

<sup>10</sup> ICC-01/05-01/08-49

<sup>11</sup> ICC-01/05-01/08-73-Conf

<sup>12</sup> ICC-01/05-01/08-83-Conf

<sup>13</sup> ICC-01/05-01/08-76

application for paid legal assistance. The Prosecution did not participate in that procedure as it was not notified of the application.

11. On 26 August 2008, the Defence filed an “Application for the Lifting of Seizure” (hereinafter the “Application”). The Application, which was received by the Prosecution on 29 August 2008, seeks the lifting of the seizure and return of all of Mr. Bemba’s assets including the “urgent lifting of the seizure ... [REDACTED]”.<sup>14</sup>

12. The above procedural history does not refer to the pleadings related to asset, freezing and seizure because all such pleadings remain under seal and are *ex parte*.

### III. Response

13. The Application appears to be based on two arguments. First, that the applicant has no means of covering the costs of a defence including legal fees. Second, that there is a risk of indigence to family or that they are indigent and specifically seeks [REDACTED]<sup>15</sup>, [REDACTED].

14. In paragraphs 26 and 27, counsel for the Applicant states that the seizure of the assets and bank accounts of Mr. Bemba has deprived his family of “its minimum livelihood, risks becoming indigent”. But there is no personal declaration of indigence by the Applicant. In the Prosecution’s view, concurring with the Registry’s previous observations of 25 August 2008 in this regard, the information which is necessary for a determination that there is a risk of indigence is lacking.

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<sup>14</sup> ICC-01/05-01/08-81-Conf-tENG, last paragraph

<sup>15</sup> ICC-01/05-01/08-81-Conf-tENG, paragraph 53

There is not evidence of the alleged indigence and in any case, the alleged indigence is not a reason to unfreeze the assets and monies of the Defendant. The Prosecution submits that there could be alternative solutions such as limited remittances for reasonable and essential expenses on a scheduled basis and based on billing system.

15. The Prosecution also notes that the said assets could potentially be used to satisfy any future reparation order made by victims for harm which may have been caused to them pursuant to Article 75 of the Rome Statute and this is a priority requirement under the Statute. In that regard, the Prosecution notes that there is no indication in the Application that either the Victim Participation and Reparation Section (hereinafter "VPRS") or the Office of the Public Counsel for Victims (hereinafter "OPCV") has been notified of this Application despite the earlier involvement in the original application to the Registrar of one of those offices.

#### **IV. Relief Sought**

16. Further to its earlier submissions, the Prosecution respectfully requests that the application be dismissed.



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**Fatou Bensouda, Prosecutor**

Dated this 28<sup>th</sup> Day of July 2016  
At The Hague, The Netherlands