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THE PRESIDENCY

Before: Judge Chile Eboe-Osuji, President
Judge Robert Fremr, First Vice-President
Judge Marc Perrin de Brichambaut, Second Vice-President

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

Public Redacted

With Confidential Ex Parte Mr Bemba only Annexes A and B

Public Redacted Version of "Mr. Bemba's request for the designation of a Pre-Trial Chamber pursuant to Regulation 46(3) of the Regulations of the Court"

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

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State Representatives

Competent authorities of the Kingdom of Belgium

Competent authorities of the Portuguese Republic

Competent authorities of the Democratic Republic of the Congo

REGISTRY

Registrar

Peter Lewis

A. INTRODUCTION

1. Mr. Bemba presents this application in order finally to bring case ICC-01/05-01/08 to an end. For, whilst he was acquitted by the Appeals Chamber nearly two and a half years ago, his property and assets in the Republic of Portugal (“Portugal”) and the Kingdom of Belgium (“Belgium”) (together “the States”), seized for the purposes of preserving assets for the purposes of providing reparations for victims in the Central African Republic, in the event of his conviction, remain frozen. Now, in addition to continuing to devalue and disintegrate, Mr. Bemba’s property and assets are being corruptly mismanaged and misused. The situation must be resolved finally.

2. Mr. Bemba hereby requests the Presidency to designate a Pre-Trial Chamber pursuant to Regulation 46(3) of the Regulations of the Court (“Regulations”) to issue Requests for Assistance to the relevant authorities of the States to discharge all remaining freezing, protective or charging orders over Mr. Bemba’s assets and properties that are still in place. Mr. Bemba further requests the Presidency to designate a Pre-Trial Chamber to adjudicate his claim for damages arising from the freezing of his assets, and their consequent deterioration, depreciation and destruction.

3. From the moment of Mr. Bemba’s acquittal by the Appeals Chamber on 8 June 2018, the freezing orders over his property in Belgium and Portugal ceased to have any legal effect. The basis of the execution of the freezing orders was Articles 53 and 91 of the Rome Statute, namely, the preservation or protection of property for the purposes of orders of restitution or reparation to victims in that case. When reparations became no longer possible, the legal basis for the freezing orders no longer existed.¹

¹ See, e.g. [ICC-01/05-01/08-3656-US-Exp-Red](#), para. 7, where the Registry submitted that following Mr. Bemba’s acquittal, the freezing orders were “null and void”.

4. Mr. Bemba has made consistent efforts over the past two and a half years to regain access to this property, including but not limited to (i) repeatedly writing, through his lawyers, to the Portuguese and Belgian authorities;² (ii) asking for the assistance of the Registry;³ and (iii) seising Trial Chamber III with numerous requests.⁴ No progress has been made. Even basic requests for an account in relation to each item of property frozen⁵ were opposed by the Registry,⁶ and rejected by the Trial Chamber.⁷

5. Responsibility for lifting the freezing orders is an ever-shifting mark; the Registry insists that it cannot take any steps without an order from the Trial Chamber;⁸ the Trial Chamber considered itself not competent to make an order, and ordered the Registry to liaise with the States;⁹ and the States have refused to act absent an order from a Chamber. As such, Mr. Bemba is able to watch the ongoing deterioration of his assets, but can do nothing to secure their return. The frozen property includes that belonging to his family members,¹⁰ which was itself illegally seized.

6. Mr. Bemba has been compelled again to come before the Court because he has recently learnt that – in addition to being frozen with no legal basis – his assets are now being corruptly misused and his properties illegally occupied. Whether those occupying his frozen properties are tenants paying rent to the State authorities, or members of the authorities themselves, is unclear. Regardless, after two and a half

² Annexes A and B.

³ See, e.g. [ICC-01/05-01/08-3670-Conf-Exp](#), paras. 8-11, and [ICC-01/05-01/08-3670-Conf-Exp-AnxA](#); [ICC-01/05-01/08-3670-Conf-Exp-AnxB](#); [ICC-01/05-01/08-3670-Conf-Exp-AnxC](#).

⁴ See [ICC-01/05-01/08-3654-Conf-Exp](#); [ICC-01/05-01/08-3657-Conf-Exp](#); [ICC-01/05-01/08-3659-Conf-Exp](#); [ICC-01/05-01/08-3670-Conf-Exp](#).

⁵ [ICC-01/05-01/08-3654-Conf-Exp](#), p. 18.

⁶ [ICC-01/05-01/08-3656-US-Exp-Red](#).

⁷ [ICC-01/05-01/08-3655-US-Exp](#). See also [ICC-01/05-01/08-3663-Conf-Exp](#), again opposed by Registry ([ICC-01/05-01/08-3665-Conf-Exp](#)) and rejected by the Trial Chamber ([ICC-01/05-01/08-3667-US-Exp](#)).

⁸ [ICC-01/05-01/08-3658-US-Exp-Red](#), para. 6.

⁹ [ICC-01/05-01/08-3660-US-Exp-Red](#), paras. 12, 14.

¹⁰ [ICC-01/05-01/08-3657-Conf-Exp](#), para. 8.

years, the situation must be resolved. The Court is hereby on notice of this corrupt misuse of property frozen at its request by a State Party, and is asked to act.

B. LEVEL OF CONFIDENTIALITY

7. The present request is filed confidentially as it concerns Mr. Bemba's property and finances. It is filed *ex parte* because the matters herein are unrelated to the former parties and participants of the *Bemba* case. A public redacted version will also be filed.

C. PROCEDURAL HISTORY

8. On 24 May 2008, Mr. Bemba was arrested on the basis of an arrest warrant delivered by Pre-Trial Chamber III.¹¹

9. In May 2008, Mr. Bemba's property and assets in Portugal, Belgium, and the Democratic Republic of Congo were seized and frozen on the basis of applications for Requests for Assistance filed by the Office of the Prosecutor,¹² and issued by Pre-Trial Chamber III.¹³ These assets were frozen to preserve assets for the provision of reparations to victims in the Central African Republic in the event of a conviction.

10. Throughout the pre-trial and trial phases of the case, Mr. Bemba made repeated requests for the proper management of these frozen assets.¹⁴ Between May 2008 and the present day, no steps have been taken to manage or preserve the value of the assets. No mortgages have been paid, nor have taxes, parking fees, or registration payments. Houses, cars and other physical property have disintegrated and deteriorated.

¹¹ [ICC-01/05-01/08-1-tENG-Corr](#); [ICC-01/05-01/08-3343](#), para. 1.

¹² [ICC-01/05-01/08-128-Conf-AnxA](#), para. 131.

¹³ ICC-01/05-01/08-2-US-Exp (Mr. Bemba does not currently have access to this filing) cited [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 does not currently have access to this filing) cited in [ICC-01/05-01/08-37-Conf](#), fn. 4.

¹⁴ See, for example, [ICC-01/05-01/08-1087-Conf-Exp-Anx3](#); [ICC-01/05-01/08-1563-Conf-Exp-AnxB](#); [T-15-CONF-EXP](#), 25:16-28:5.

11. No records were kept of the property that had been seized or frozen. The Registry's [REDACTED].¹⁵

12. Internal Registry documents reveal that it had no ability or expertise to manage the process of seizing and freezing an accused's assets. An August 2016 report acknowledges "overlaps and inefficiencies and a lack of clarity as to internal processes when dealing with cooperation requests involving complex legal issues" and a "grossly insufficient" ability to deal with these issues. The Registry acknowledged being "unable to adequately react to cooperation requests or proactively identify cooperation opportunities in practical and tangible ways" with "little capacity to effectively follow up on these requests to obtain the requested cooperation".¹⁶

13. Regarding frozen assets specifically, "limited human resources were dedicated to drafting requests and follow-up, leaving no time for strategic planning and engagement with key stakeholders on this matter". The Registry acknowledged that "requests were sent **and not followed up**" meaning that "asset freezing could not be pursued strategically" and "a number of requests or opportunities could simply not be pursued and crucial opportunities were lost."¹⁷ As such, it was "not possible" to ensure access to the resources that could be used for reparations.¹⁸

14. After funds for "training on the freezing of assets" were re-directed, the Registry acknowledged in 2012 that "cancellation of these funds will lead to loss of expertise. As a consequence, it is likely that certain assets might not become available

¹⁵ [ICC-01/05-01/08-3657-Conf-Exp](#), para. 7.

¹⁶ ICC Registry, [Comprehensive Report on the Reorganisation of the Registry of the International Criminal Court](#), August 2016, pp. 13-14.

¹⁷ ICC Registry, [Comprehensive Report on the Reorganisation of the Registry of the International Criminal Court](#), August 2016, para. 444.

¹⁸ *Id.*, p. 14 and para. 432.

for use in payment for defence teams, damages and/or reparations.”¹⁹ In October 2015, after Mr. Bemba’s assets had been frozen for seven years, the Court again acknowledged its shortcomings in technical expertise in financial investigations and tracing assets, stating that “relevant expertise and experience within the Court, but also within domestic jurisdictions, was currently rather limited. Specifically, it was pointed out that there [were] not enough financial investigators at the Court to conduct such complex investigations”.²⁰

15. On 8 June 2018, Mr. Bemba was acquitted by the ICC Appeals Chamber. He had spent more than 10 years in prison.²¹

16. On 22 October 2018, Mr Bemba notified the Presidency of his intention to file a request for compensation under Article 85 of the Rome Statute,²² and sought a variation of the time and page limits. This request made plain that Mr. Bemba would be seeking compensation for the destruction and disintegration of his property; that he would be engaging experts to assist him in quantifying the loss, and that the claim may involve “submissions concerning principles of agency law, trust law, fiduciary duties, and submissions concerning the desirability of joining third parties as intervenors”.²³

17. On 30 October 2018, the Presidency designated Pre-Trial Chamber II to consider Mr. Bemba’s claim for compensation.²⁴ The designation was framed in the following terms:

[REDACTED]

¹⁹ ICC-ASP/11/15, [Report of the Committee on Budget and Finance on the work of its nineteenth session](#), 29 October 2012, p.43.

²⁰ ICC, [Report on cooperation challenges faced by the Court with respect to financial investigations](#), Workshop 26–27 October 2015, The Hague, Netherlands, Forward-looking conclusions, p. 4.

²¹ [ICC-01/05-01/08-3636-Conf.](#)

²² [ICC-01/05-01/08-3661-Conf.](#)

²³ *Id.*, para. 26.

²⁴ [ICC-01/05-01/08-3662-Conf-Exp.](#)

[REDACTED];

18. On 8 March 2019, Mr. Bemba filed his Claim.²⁵ The Claim was comprised of two parts; (i) a request for compensation pursuant to Article 85(3) of the Statute, which the Pre-Trial Chamber called the First Component; and (ii) a claim for damages arising from the Court's negligence and/or breach of fiduciary duty in failing to preserve the Claimant's property and assets, which was termed the Second Component. In support of the Second Component, the Claim annexed a valuation report into the losses caused to Mr. Bemba through the seizure and freezing of his assets ("Report"). The Report's provisional calculation of Mr Bemba's losses sets them at €42.4 million. This calculation of loss only extended to 31 December 2018.²⁶

19. The Second Component was pleaded "in the alternative", meaning that a finding that the case met the qualifying criteria of Article 85 of the Statute was not a pre-requisite to a determination that Mr. Bemba was entitled to compensation for the loss arising from the seizure of his property:²⁷

If the Chamber accepts, firstly, that the criteria under Article 85 are satisfied, and, secondly, that the losses sustained by Mr. Bemba are a consequence of the miscarriage of justice he suffered, then it could go on to award him compensation for those losses. If, however, it balks at either proposition, that is not an end of the matter.

Mr. Bemba alleges that, in any event, the Court acted negligently in seizing and freezing his property but failing properly to manage it or even account for it. This liability arises irrespective of any consideration of a miscarriage of justice. Put simply, Mr. Bemba would have had a valid claim even in the event of his conviction in the criminal trial.

²⁵ [ICC-01/05-01/08-3673-Conf](#), Mr Bemba's claim for compensation and damages, 8 March 2019, with public Annexes A, B, C, D and E, and confidential Annexes F, G, H and I ("Claim").

²⁶ *Id.*, Annex F.

²⁷ *Id.*, paras. 5-6.

20. On 14 March 2019, the Pre-Trial Chamber issued its *Order on the conduct of the proceedings related to 'Mr Bemba's claim for compensation and damages'*,²⁸ in which it asked the Registry to submit its observations on the Claim, noting that “the Defence submissions relate to the functions of the Registry”.²⁹ It also convened an oral hearing “in order for the parties to present orally their observations to the Chamber on the Claim,”³⁰ to which it also invited the Registry. Under Article 85, the only parties to proceedings are the applicant and the Prosecution. The Chamber’s invitation to the Registry to make submissions as to its alleged misfeasance was an apparent acceptance by the Chamber of its competence to entertain Mr. Bemba’s claim in the alternative.

21. On 9 May 2019, the Pre-Trial Chamber held an oral hearing. The submissions centred on the question of damages arising from the destruction of Mr. Bemba’s property and assets.³¹ The Pre-Trial Chamber asked questions and solicited further information from the parties on the question of damages arising from the destruction of the Claimant’s assets and property.³² The Registry representatives made extensive submissions which were adverse to Mr. Bemba’s position.³³

22. After a delay of over a year, on 18 May 2020, Pre-Trial Chamber II rejected the Claim (“the Decision”).³⁴ Despite having convened an oral hearing, and invited and engaged in extensive submissions on the question of the destruction of Mr. Bemba’s property and assets, the Second Component was dismissed on the basis that Pre-Trial had “no jurisdiction” over it.³⁵

²⁸ [ICC-01/05-01/08-3675](#).

²⁹ *Id.*, para. 8.

³⁰ *Id.*, para. 7.

³¹ [ICC-01/05-01/08-T-376-ENG ET WT](#), p. 4, lines 4-9; p. 5, line 19 – p. 15, line 7; p.24, line 2-22; p. 27, line 25 – p. 29, line 17; p. 32, line 1 – p. 33, line 5; p. 34, line 1 – p. 37, line 19; p. 38, line 10 – p. 40, line 16.

³² *Id.*, p. 27, line 25 – p. 28, line 7; p. 30, line 22 – p. 31, line 5; p. 33, lines 8-11.

³³ *Id.*, p. 34, line 1 – p. 37, line 19.

³⁴ [ICC-01/05-01/08-3694](#), p. 34. *See also*, para. 17.

³⁵ *Id.*, para. 61.

23. At no point during the oral hearing had the Pre-Trial Chamber indicated that there was a jurisdictional question at issue, nor were the parties invited to make submissions on this question. Nor was there any indication that the Pre-Trial Chamber had sought clarification from the ICC Presidency as to the limits of its mandate, nor a finding that a decision determining a claim for damages requires, as a condition precedent, an express mandate from the Presidency. Regardless, the Pre-Trial Chamber concluded that its mandate from the Presidency was “strictly limited to considering whether financial compensation may be awarded on the basis of a claim submitted under article 85 of the Statute”,³⁶ rather than adjudicating Mr. Bemba’s Claim.

24. On 25 May 2020, Mr. Bemba requested certification to appeal the Pre-Trial Chamber’s Decision, pursuant to Article 82(1)(d) of the Statute, raising 12 appealable issues.³⁷ One of the appealable issues raised was the failure by the Pre-Trial Chamber to accord due respect to Mr. Bemba’s acquittal by the Appeals Chamber.³⁸ The Trial Chamber’s lengthy citations to the Dissenting Opinion of Judge Sanji Mmasenono Monageng and Judge Piotr Hofmánski³⁹ to dismiss Mr. Bemba’s arguments were preceded with statements such as the following:⁴⁰

The Chamber is aware that Mr Bemba’s acquittal was based on a standard of review which, **far from being uncontroversial**, split the Appeals Chamber, triggered the dissent of two Judges and **led to questioning its consistency with the statutory framework**, where decisions taken by the Appeals Chamber are not subject to an additional layer of review.

³⁶ *Id.*, para. 60.

³⁷ [ICC-01/05-01/08-3695](#), para. 26.

³⁸ *Id.*, para. 26 xii, citing [ICC-01/05-01/08-3694](#), paras. 4, 26, 28.

³⁹ [ICC-01/05-01/08-3636-Anx1-Red](#).

⁴⁰ [ICC-01/05-01/08-3694](#), para. 28 (emphasis added).

25. On 1 October 2020, the Pre-Trial Chamber rejected Mr. Bemba's request for leave to appeal, finding that none of the issues raised could be considered as interlocutory within the meaning and for the purposes of Article 82(1)(d) of the Statute.⁴¹

D. SUBMISSIONS

(1) The Freezing Orders

26. Mr. Bemba's assets were frozen by the States following Requests for Assistance issued by Pre-Trial Chamber III in the *Bemba* case. The original Requests for Assistance issued by the Court to Portugal, Belgium, and the DRC were cast in the broadest terms, inviting the states to trace and freeze all Mr. Bemba's assets (and in some cases those of his wife and children) within their jurisdictions.⁴² The responsibility for lifting the freezing orders has been shifted between the States, the Registry and the Chambers, for two and a half years.

27. The Registry's position, mirrors that of Mr. Bemba, namely, that "the judicial authority lies with a Chamber, pursuant to articles 57(3)(e) and 93(1)(k) of the Statute, to issue requests for cooperation to impose protective measures on assets at the domestic level necessarily also includes the authority to lift such protective measures."⁴³

28. For their part, the States will not unfreeze the assets without a request from the Court. The States have been open in their refusal to communicate with Mr. Bemba or his lawyers, and require instead for all correspondence to pass through the ICC.⁴⁴ This is consistent with the position the States have adopted throughout the

⁴¹ [ICC-01/05-01/08-3697](#).

⁴² See [EVD-P-03324/CAR-OTP-0041-0165](#); [CAR-D04-0007-0083](#) and [ICC-01/05-01/08-8](#).

⁴³ [ICC-01/05-01/08-3658-US-Exp-Red](#), para. 6.

⁴⁴ Annex B, p. 6.

proceedings,⁴⁵ namely that the ICC remains responsible for the process of freezing Mr. Bemba's assets, and that the States act at the request of the Court.⁴⁶ This position also reflects international practice; it is the issuing party and not the state on whose territory the assets are found which is liable and responsible for their preservation.⁴⁷

29. Trial Chamber III took a different position, namely that an acquittal or other cessation of proceedings renders neither the original cooperation requests nor the coercive measures invalid, null or void. According to the Trial Chamber, "the cooperation requests issued in this case remain, but cease to have effect in the sense that States are no longer required to comply with them, for instance by keeping any assets frozen. This, however, does not mean that assets are automatically released in the requested State. It is rather for the State to determine what action to take under domestic law as a result of the conclusion of its obligation to assist the Court through the freezing of assets."⁴⁸

30. In short, the Registry says it is for the Chamber to act, the Chamber says it is for the States to act, and the States will not act without the Chamber issuing an order. This *impasse*, which results in a daily increase in economic loss for which restitution must be provided, must be resolved. Not least to prevent the resources of the ICC and Mr. Bemba being consumed in an endless cycle of litigation.

⁴⁵ [REDACTED].

⁴⁶ [ICC-01/05-01/08-254](#). When it became apparent that money was missing from a frozen bank account, for example, it was the ICC that ordered Portugal to conduct an investigation.

⁴⁷ See, for example, [EU Regulation Proposal \(2016\)](#), Article 34 – Reimbursement: (1) "Where the executing State is responsible under its national law for injury caused to one of the interested parties referred to in Article 33 by the execution of a freezing or confiscation order transmitted to it pursuant to Articles 4 and 14, the issuing State shall reimburse the executing State of any sums paid in damages by virtue of that responsibility to the interested party except if, and to the extent that, the injury or any part of it is exclusively due to the conduct of the executing State." (2) "Paragraph 1 is without prejudice to the law of the Member States on claims by natural or legal persons for compensation of damage." See also [EU Council Framework Decision \(2003\)](#), Article 12; [EU Council Framework Decision \(2006\)](#), Article 18. See also *Derby & Co Ltd v Weldon* (nos 3 and 4) [1990] Ch 65.

⁴⁸ [ICC-01/05-01/08-3660-US-Exp-Red](#), para. 13.

31. Solutions to the *impasse* exist. Trial Chamber III held that “the lifting of coercive measures, including the unfreezing of assets, must be done under domestic law.”⁴⁹ As such, it held that it “was not the competent body to order the lifting of any such orders.”⁵⁰ Given that Trial Chamber III did not believe itself to have jurisdiction to act, the Presidency should now assign a Chamber with the express mandate to order appropriate Requests for Assistance to the States to stem the ongoing economic losses resulting from the 2008 requests.

32. The urgency of the situation is now aggravated by the evidence in Mr. Bemba’s possession of the illegal occupation of properties belonging to him. Not only is he still unable to access these properties and assess the damage that has been caused by over a decade of neglect, but it now appears that people are living in them. It could never have been the Court’s intention in issuing Requests for Assistance in 2008 that this would be the result; that the frozen property would devalue to the tune of 40 million euros, and would then be corruptly mismanaged following Mr. Bemba’s acquittal. Freezing orders are intended to preserve assets for future determination of liability. There are no circumstances where they operate to transfer beneficial ownership to the executing state or authority in this way. The situation is scandalous, and the Court must act.

33. Neither can there be any suggestion that the assets in question can lawfully continue to be frozen for some other liability or purpose, for example, any alleged indebtedness in relation to Mr. Bemba’s arrangement with the Court for the discharge of his legal fees, or a fine imposed in the context of other proceedings.⁵¹ The former, a contractual arrangement, cannot be enforced via the continuation of freezing orders which were made pursuant Articles 53 and 91 of the Rome Statute for the purposes of reparations. At the very least, the Court would be obliged to bring separate civil

⁴⁹ *Id.*, para. 12.

⁵⁰ *Id.*

⁵¹ Under Rule 166(3) of the Rules, see [ICC-01/05-01/13-2351](#).

proceedings in a domestic court for the recovery of a contractual debt (and doubtless be met with a counterclaim which would completely extinguish it).

34. In relation to the latter, there are mechanisms within the Rules for the enforcement of the payment of fines, including the imposition of a term of imprisonment in default of which the accused is entitled to avail himself. There is no reason to suppose, in any event, that the applicant is not intending to pay the fine and the frozen property has a value disproportionate to the outstanding balance, in any event. The absence of any link made by either the ICC Registry or the States between the continued freezing of Mr. Bemba's property and his outstanding legal fees or Article 70 fine is telling in this regard. It is a clear acknowledgment, in the submission of Mr. Bemba, that such a suggestion would be procedurally inconceivable and unlawful.

35. There is no basis for the continued freezing of Mr. Bemba's assets and properties. After two and a half years, he asks the Presidency to assign a Chamber to issue Requests for Assistance to reverse the instructions given in 2008 at the time of his arrest. It appears that nothing else will end this case or the ongoing financial loss caused by the freezing orders and illegal misuse and appropriation of the frozen property.

(2) The Compensation Claim

36. Pre-Trial Chamber II's perceived lack of jurisdiction to decide the Second Component of Mr. Bemba's Claim does not put an end to his right to obtain compensation for damages to his assets.

37. Mr. Bemba is not revisiting the final determination of Pre-Trial Chamber II that a grave and manifest error of justice did not occur. He accepts the finality of this decision. However, Pre-Trial Chamber II refused the Second Component on the basis

of a lack of jurisdiction to decide it.⁵² This does not mean that the Court does not have jurisdiction, only that the Pre-Trial Chamber believed itself not to have been given jurisdiction by the Presidency. The Court has the ability to deal with a request of this sort; if not Pre-Trial Chamber II, then another Chamber ought to be designated and mandated to consider it.

38. International criminal courts and tribunals are not immune from the obligations to remedy damage caused to individuals. At the ICC, Article 21(1)(b) of the Statute requires the Court to apply, “where appropriate, applicable treaties and the principles and rules of international law”. This has been understood to include “customary international law principles”⁵³ and “customary rules”.⁵⁴ Article 21(1)(c) allows the Court to apply general principles of law derived from national laws. Article 21(3) requires the Court to adhere to internationally recognised human rights.

39. Mr. Bemba has the right to own property of which he shall not be arbitrarily deprived. The right to property is part of customary international law because of its recognition by almost all nations, who have expressed their belief that the right exists under international law.⁵⁵ More than two thirds of states are party to an international human rights treaty – the Universal Declaration on Human Rights,⁵⁶ American

⁵² [ICC-01/05-01/08-3694](#), para. 61.

⁵³ DeGuzman, M., M. “Article 21. Applicable Law”, in Triffterer, O., Ambos, K. (eds.), *Rome Statute of the International Criminal Court A Commentary*, C.H. Beck Hart Nomos, 2016, 3rd ed., p. 939.

⁵⁴ *Id.*, p. 941.

⁵⁵ Sprankling, J., G., “[The Global right to Property](#)”, 52 *Colum. J. Transnat’l L.* 464, at 465 (or p.1 of this website).

⁵⁶ [UDHR](#), Article 17: ‘Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.’

Convention,⁵⁷ the European Convention of Human Rights,⁵⁸ the African Charter,⁵⁹ and the Arab Charter⁶⁰ – which recognises the right to property and a court with the power to issue legally binding judgments to enforce it.

40. The freezing and seizure of Mr. Bemba’s property and assets with no concomitant measures to preserve their value interfered with Mr. Bemba’s right to own and enjoy property. As such, he is entitled to a remedy. The right to a remedy for violations of human rights “undoubtedly forms part of customary international law”,⁶¹ and is expressly provided for in the international declarations and conventions.⁶² The ICTY and ICTR recognized that violations of rights demand a remedy.⁶³

41. While there is nothing in the ICC’s constituent documents that provides for financial compensation to remedy a violation of an accused’s or former accused’s human rights, the ICC has the power to provide an effective remedy, arising from the combined effect of its inherent powers and its obligation to respect generally accepted

⁵⁷ [American Convention on Human Rights](#), Article 21: Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment in the interest of society. (2) No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.

⁵⁸ [ECHR](#), Article 1, Protocol 1: Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. The ECtHR has ruled that Article 1 protects the right to property. See, e.g., [Marckx v. Belgium](#), App. No. 6833/74, Eur. Ct. H.R., para. 63.

⁵⁹ [African Charter on Human and Peoples’ Rights](#), Article 14.

⁶⁰ [Arab Charter on Human Rights](#), Article 25.

⁶¹ [Rwamakuba](#), TC, para. 40.

⁶² [UDHR](#), Article 8; [ICCPR](#), Article 2(3)(a); [Convention on Elimination of All Forms of Racial Discrimination](#), Article 6; [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment](#), Article 14(1); [ECHR](#), Article 13; [American Convention on Human Rights](#), Article 25.

⁶³ *Kajelijeli v. The Prosecutor*, ICTR-98-44A-A, [Judgment](#), 23 May 2005, para. 209; *Prosecutor v. Barayagwiza*, ICTR-97-19-AR72, [Decision \(Prosecutor’s Request for Review or Reconsideration\)](#), 31 March 2000, para. 74; *The Prosecutor v. Rwamakuba*, ICTR-98-44C-T, [Decision on Appropriate Remedy](#), 31 January 2007, paras 42-43.

human rights norms.⁶⁴ The ICC has acknowledged its right to invoke inherent powers or “incidental jurisdiction”.⁶⁵ A natural corollary of the ICC’s obligation to adhere to internationally recognised human rights is the ability to afford an effective remedy upon their violation.

42. Whether or not Mr. Bemba is entitled to the remedy he will seek, will be for the designated Chamber to decide. However, he should be afforded an opportunity to make his case and provide reasoned arguments and evidential support for his claim that he suffered financial loss as a result of the freezing orders implemented in the *Bemba* case.

43. As such, Mr. Bemba requests the Presidency to assign a Chamber to adjudicate his claim for damages arising from the freezing of his assets and property at the request of the Court.

E. REQUESTED RELIEF

44. For the reasons outlined above, Mr. Bemba, requests the Presidency to:

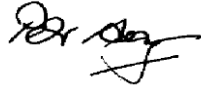
DESIGNATE a Pre-Trial Chamber pursuant to Regulation 46(3) of the Regulations to issue Requests for Assistance to the relevant authorities of the States to discharge all remaining freezing, protective or charging orders over Mr. Bemba’s assets and properties that are still in place; and

DESIGNATE a Pre-Trial Chamber pursuant to Regulation 46(3) of the Regulations to adjudicate a claim for damages resulting from the freezing of Mr. Bemba’s assets, and their consequent deterioration, depreciation and destruction.

⁶⁴ See, e.g. *The Prosecutor v. Rwamakuba*, ICTR-98-44C-T, [Decision on Appropriate Remedy](#), 31 January 2007, p. 23; the Appeals Chamber affirmed the award, in *The Prosecutor v. André Rwamakuba*, ICTR-98-44C-A, [Decision on Appeal against Decision on Appropriate Remedy](#), 13 September 2007, para. 32.

⁶⁵ [ICC-01/05-01/13-2276-Red](#), para. 75, 76.

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 of Mr. Jean-Pierre Bemba

Done at The Hague, The Netherlands, 3 November 2020