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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

**Prosecution's response to Mr Bemba's request to designate a Pre-Trial Chamber
pursuant to Regulation 46(3) of the Regulations of the Court**

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INTRODUCTION

1. On 3 November 2020, Mr Bemba requested the Presidency to constitute a Pre-Trial Chamber under regulation 46(3) of the Regulations of the Court (RoC) “in order finally to bring case ICC-01/05-01/08 to an end”.¹ Mr Bemba’s request is redundant: case ICC-01/05-01/08 has already been brought to an end. Further, although Mr Bemba’s stated objective is to bring closure, the import of his request is otherwise. In effect, he seeks to re-open proceedings that have been finally adjudicated and re-litigate closed matters—without any statutory basis to do so.

2. In particular, the Appeals Chamber, by majority, reversed Mr Bemba’s conviction in the Main Case (case 01/05-01/08) in June 2018.² As a result, Trial Chamber III discontinued the reparations proceedings in the Main Case (case 01/05-01/08) in July 2018.³ In October 2018, Trial Chamber III also asked the Registry to notify relevant States that proceedings against Mr Bemba had ended, since he was no longer being investigated or prosecuted in the Main Case, and that they were no longer required to comply with the Court’s requests to freeze his assets.⁴ And recently in May 2020, Pre-Trial Chamber II rejected Mr Bemba’s compensation claim under article 85(3) of the Statute (since he had failed to establish a grave and manifest miscarriage of justice, First Component).⁵ The Pre-Trial Chamber also found that it had no jurisdiction over Mr Bemba’s claim for damages alleging mismanagement of his assets (Second Component) and dismissed that aspect.⁶ Subsequently, Mr Bemba’s request for leave to appeal the Compensation Decision

¹ ICC-01/05-01/08-3698-Red (“[Request](#)” or “[Mr Bemba’s Request](#)”), para. 1.

Regulation 46(3), [RoC](#): Any matter, request or information not arising out of a situation assigned to a Pre-Trial Chamber in accordance with sub-regulation 2, shall be directed by the President of the Pre-Trial Division to a Pre-Trial Chamber according to a roster established by the President of that Division.

² ICC-01/05-01/08-3636-Red (“[Bemba AJ](#)”), para. 198.

³ ICC-01/05-01/08-3653 (“[Reparations Decision](#)”), para. 3.

⁴ ICC-01/05-01/08-3660-Red2 (“[Assets Unfreezing Decision](#)”), para. 15.

⁵ ICC-01/05-01/08-3694 (“[Compensation Decision](#)”), para. 52.

⁶ [Compensation Decision](#), para. 61.

was also rejected.⁷ With this, Mr Bemba exhausted the avenues available to him under the Statute in relation to case 01/05-01/08.

3. While Mr Bemba argues, in his present Request, that designating a Pre-Trial Chamber is necessary (i) to issue Requests for Assistance (RFAs) to relevant State authorities to discharge remaining freezing orders over his assets; and (ii) to adjudicate his claim for damages arising from the freezing of his assets,⁸ this amounts to re-litigating his earlier failed requests before various Chambers of this Court. The Presidency has recently found that requests before it that duplicate earlier unsuccessful claims are “devoid of any legal basis” and must be rejected.⁹ It also found that such duplicative requests are unwarranted and interfere with the expeditious administration of justice and that they amount to a potential abuse of process.¹⁰ Mr Bemba’s Request is exactly that—it should be rejected on the same basis.

4. It is unclear if Mr Bemba’s Request is even properly before the Presidency. Regulation 46(3) of the RoC, which he relies on, requires requests to be directed to the President of the Pre-Trial Division.¹¹ Nevertheless, the Presidency may address Mr Bemba’s Request, in the interests of establishing the finality of the proceedings in case 01/05-01/08 and to conserve the limited resources of the Court.¹²

5. The Prosecution notes that it does not have access to some information that Mr Bemba relies on as he argues that it is “unrelated to the former parties and

⁷ ICC-01/05-01/08-3697 (“[Compensation ALA Decision](#)”), p. 11.

⁸ [Request](#), para. 2.

⁹ ICC-02/05-01/20-180 (“[Abd-Al-Rahman Presidency Decision](#)”), para. 6.

¹⁰ [Abd-Al-Rahman Presidency Decision](#), para. 6 (“[...] Following rejection of leave to appeal the Single Judge Decision and rejection of his request for reconsideration of the Decision on Leave to Appeal, Mr Abd-Al-Rahman nevertheless brought an almost identical request before the Presidency, which is clearly devoid of any legal basis. Such duplication of proceedings is unwarranted, interferes with the expeditious administration of justice and may even be considered an abuse of process. The Request could have been rejected on this basis alone.”). See also ICC-02/11-01/15-1376-Anx (“[Gbagbo Judge Eboe-Osuji and Judge Morrison Sep Op](#)”), para. 6 (noting “[...] the familiar maxim *expedit rei publicae ut sit finis litium* (alternatively *interest rei publicae ut sit finis litium*). It states the public interest that litigation must come to an end at some point.”).

¹¹ Regulation 46(3), [RoC](#).

¹² [Gbagbo Judge Eboe-Osuji and Judge Morrison Sep Op](#), paras. 6-9 (noting the unique principle of public policy which requires that litigation must stop at some point).

participants of the *Bemba* case.”¹³ It is unclear why this confidentiality is necessary, since Mr Bemba mostly re-litigates submissions based on information on his assets previously available to the parties in the compensation proceedings. In any event, the Court’s Registry is best placed to address the merits of Mr Bemba’s submissions relating to the status of his assets and correspondence with relevant States. Should it be considered necessary, the Registry may be invited to make submissions.

SUBMISSIONS

6. While Mr Bemba claims that constituting a separate Pre-Trial Chamber at this late stage is necessary, the two reasons he gives for this designation are incorrect and unfounded.¹⁴ His Request should be dismissed.

I. MR BEMBA’S REQUEST TO DESIGNATE A CHAMBER TO ISSUE COOPERATION REQUESTS IN RELATION TO HIS ASSETS IS MISPLACED

7. While Mr Bemba argues that a Pre-Trial Chamber is necessary to issue RFAs to the relevant State authorities of Portugal and Belgium to purportedly discharge freezing, protective or charging orders over his assets and properties, he incorrectly assumes—contrary to Trial Chamber III’s October 2018 decision and Pre-Trial Chamber II’s May 2020 decision—that his assets are still being frozen for the purpose of the Main Case proceedings at the Court.¹⁵ They are not.¹⁶ Moreover, while he suggests that his assets remain frozen by certain States, he speculates that those States will not comply with the Court’s existing orders, such that new RFAs by a new Pre-Trial Chamber are necessary.¹⁷ Further, when the proceedings against Mr

¹³ [Request](#), para. 7.

¹⁴ [Request](#), para. 2.

¹⁵ [Request](#), para. 35.

¹⁶ [Assets Unfreezing Decision](#), paras. 8-18.

¹⁷ [Request](#), paras. 28, 30.

Bemba at the Court have themselves ended and he is no longer being investigated or prosecuted at the Court, there is no statutory basis to rely on Part 9 of the Statute to issue RFAs in the manner that Mr Bemba describes.¹⁸

8. *First*, in mis-stating that States are still required by the Court to freeze his assets in relation to the Main Case,¹⁹ Mr Bemba overlooks the import of earlier decisions of this Court (Trial Chamber III and Pre-Trial Chamber II) that are germane.²⁰

9. Following his acquittal in the Main Case, Trial Chamber III—in adjudicating a similar request from Mr Bemba to discharge freezing orders on his assets—specified the clear demarcation of the roles of the Court and the relevant States in relation to Mr Bemba’s assets.²¹ It found, as follows:

- The Court itself does not order the freezing or seizure of assets, but rather orders that cooperation requests be sent to States for them to do so. Assets are ultimately frozen or seized on the basis of actions taken by the State under its domestic law.²² Similarly, the unfreezing of assets must also be done under domestic law.²³ The Chamber is not the competent body to order the lifting of these orders.²⁴
- While an acquittal or other cessation of proceedings does not render the original cooperation requests invalid, they cease to have effect and the States are no longer required to comply with them (to keep assets frozen).²⁵

¹⁸ [Request](#), para. 31. *See* Article 86 (General obligation to cooperate): “States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court”; [Assets Unfreezing Decision](#), para. 14 (noting that “[an] ongoing investigation or prosecution against an accused [is] the sole basis for any cooperation obligation under Article 86 of the Statute.”).

¹⁹ [Request](#), paras. 26-30, 35.

²⁰ *See* [Assets Unfreezing Decision](#) and [Compensation Decision](#).

²¹ [Assets Unfreezing Decision](#), paras. 8-18.

²² [Assets Unfreezing Decision](#), para. 11.

²³ [Assets Unfreezing Decision](#), para. 12.

²⁴ [Assets Unfreezing Decision](#), para. 12.

²⁵ [Assets Unfreezing Decision](#), para. 13.

However, it remains for the State to determine what action to take under domestic law to unfreeze those assets.²⁶

- The Registry may notify States which have cooperated in the freezing or seizure of assets as soon as practicable that there is no longer any ongoing investigation or prosecution and that those States are no longer obliged to comply with any of the standing cooperation requests.²⁷ To this end, in relation to Mr Bemba, the Chamber noted that it was for the Registry “to communicate the Appeals Judgement and its consequences to States, if or where this has not yet been done and to engage with any relevant States should there be follow up questions.”²⁸

10. Moreover, in the compensation proceedings, Pre-Trial Chamber II re-iterated that the States bear the primary responsibility to properly execute cooperation requests.²⁹ The Registry’s role was limited to acting as a channel of communication between the Court and the States—and, in that context, the Pre-Trial Chamber found that the Registry had adequately discharged this obligation in this case.³⁰ Significantly, to the extent that Mr Bemba claimed “damage” to his assets as a result of the conduct of operations of the States, the Chamber found that it was not competent to adjudicate that matter.³¹

²⁶ [Assets Unfreezing Decision](#), para. 13.

²⁷ [Assets Unfreezing Decision](#), para. 14.

²⁸ [Assets Unfreezing Decision](#), para. 15. *See also* para. 17 (“[...] It is Mr Bemba who made the decision as to the location of his assets as he is evidently entitled to do. In so doing, however, he must accept that different legal regimes will apply to his assets in the distinct jurisdictions. [...] [I]t is indeed Mr Bemba who is best placed to identify where his assets are located. It is difficult in that context to see how the contents of the requests for cooperation are needed to assist him in the identification of his own assets. Equally, to the extent he seeks information as to the current status of his assets in terms of freezing or seizing action, the cooperation requests which were made historically throughout the case will not provide him with that type of information.” *See* ICC-01/05-01/08-3663-Red (“[Assets Unfreezing Reconsideration Request](#)”), also rejected (*see* [Request](#), para. 4, fn. 7).

²⁹ [Compensation Decision](#), paras. 56-57.

³⁰ [Compensation Decision](#), paras. 57-58.

³¹ [Compensation Decision](#), para. 58.

11. Therefore, in advancing his request to issue fresh RFAs to discharge alleged freezing orders,³² Mr Bemba disregards the clear guidance from at least two Chambers of this Court on the proper allocation of responsibilities between the Court and the States in relation to his assets. Likewise, while Mr Bemba claims that several of his efforts to liaise with the Registry did not succeed,³³ many of these appear to have taken place before Trial Chamber III’s order demarcating the roles of the Court and the States in relation to the assets, and underscoring the Registry’s role to inform the States in that regard—which he continues to overlook and misstate.³⁴

12. *Second*, Mr Bemba’s claim that “States will not unfreeze the assets without a request from the Court” at this stage of the proceedings is unsubstantiated.³⁵ Assuming *arguendo* that some communication with particular States is required in the situation, the Registry is ably positioned to do so.³⁶ Contrary to Mr Bemba’s submission,³⁷ launching fresh judicial proceedings—absent a proper statutory basis—is not the solution. Asking States to cooperate with the Court (by issuing RFAs) in the absence of an investigation or prosecution, as Mr Bemba does, lacks any proper foundation in Part 9 of the Statute.

13. *Third*, Mr Bemba’s request repeats and re-litigates several unsupported claims on the purported mismanagement of his assets from the earlier compensation litigation³⁸—which no Chamber has found necessary to address. These claims have not been established as a matter of evidence. They remain Mr Bemba’s views alone.

³² [Request](#), para. 31.

³³ [Request](#), paras. 4-5, 27.

³⁴ [Request](#), paras. 28-29, 35 (asking the Presidency to assign a Chamber to issue RFAs “to reverse the instructions given in 2008 at the time of his arrest”, disregarding the [Assets Unfreezing Decision](#)).

³⁵ [Request](#), paras. 28, 30. While Mr Bemba claims that “[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”, the Prosecution does not have access to this information.

³⁶ Rule 13, Rules of Procedure and Evidence ([RPE](#)).

³⁷ [Request](#), para. 31.

³⁸ [Request](#), paras. 6, 8-14, 26.

Likewise, his attempt to put the Court on notice of the alleged “corrupt misuse of [his] property” remains unfounded.³⁹

14. For the reasons above, Mr Bemba’s request to designate a Pre-Trial Chamber to issue RFAs in relation to his assets should be dismissed.

II. MR BEMBA’S REQUEST TO DESIGNATE A CHAMBER TO ADJUDICATE HIS DAMAGES CLAIM IS MISPLACED

15. In arguing that a Pre-Trial Chamber is necessary “to adjudicate his claim for damages arising from the freezing of his assets”,⁴⁰ Mr Bemba disregards that Pre-Trial Chamber II has already considered this aspect in the context of the compensation proceedings and dismissed it for lack of jurisdiction.⁴¹ Re-litigating the same matter before a different Pre-Trial Chamber at this stage is unwarranted. Moreover—as a private party with no standing before this Court—Mr Bemba’s request to designate a Chamber and to launch separate legal proceedings lacks any basis in the Statute.

16. *First*, while Mr Bemba argues that the Pre-Trial Chamber’s dismissal of the damages aspect of his claim “[did not] put an end to his right to obtain compensation for damages to his assets”,⁴² this is incorrect. Mr Bemba was allowed to fully access the compensation proceedings under article 85 of the Statute, and he still failed to establish his claim.⁴³ There is no other avenue under the Statute to grant “compensation”.⁴⁴ Nor is recourse to inherent powers necessary to assess this “compensation” when there is no lacuna in the Statute.⁴⁵ In this respect, Mr Bemba

³⁹ [Request](#), para. 6, 32.

⁴⁰ [Request](#), para. 2.

⁴¹ [Compensation Decision](#), paras. 53-64.

⁴² [Request](#), para. 36.

⁴³ [Compensation Decision](#), paras. 16-69.

⁴⁴ *Contra* [Request](#), para. 36.

⁴⁵ *Contra* [Request](#), para. 41. See ICC-01/05-01/13-2276-Red (“[Bemba et al. SAJ](#)”), paras. 75-76.

repeats his earlier arguments and overlooks the Pre-Trial Chamber's findings denying the use of "inherent powers" in relation to compensation claims.⁴⁶

17. *Second*, Mr Bemba's attempt to argue that Pre-Trial Chamber II's finding that it had no jurisdiction over the damages component of his claim was limited to that Pre-Trial Chamber and that a different Chamber would have jurisdiction over his claim is also without basis.⁴⁷ Mr Bemba submits that Pre-Trial Chamber II "believed itself not to have been given jurisdiction by the Presidency"⁴⁸—without foundation or nuance. This misstates Pre-Trial Chamber's findings in this respect, which were twofold.

- The Chamber found that, as Mr Bemba himself had acknowledged, the Second Component of Mr Bemba's claim was a "private law claim alleging tortious behaviour by the ICC"—and exceeded the scope of the article 85 compensation proceedings;⁴⁹
- The Chamber found that it was not competent to adjudicate questions of purported damage to Mr Bemba's assets as a result of the conduct of operation of States.⁵⁰

This second finding emanates from the deliberate demarcation of roles between the Court and the State regarding cooperation requests under the Statute, and would apply to any Chamber of this Court, not only to Pre-Trial Chamber II.⁵¹ Contrary to Mr Bemba's submission, no Chamber of this Court can adjudicate any purported damages to Mr Bemba's assets resulting from the actions of States.⁵² Further, Mr Bemba had the opportunity to challenge all findings adverse to him in the

⁴⁶ [Compensation Decision](#), para. 62 ("The Chamber finds that Mr Bemba's reference to 'inherent powers' is unsuitable to disturb its conclusion that the Second Component of the Claim falls outside the scope of its jurisdiction. [...]").

⁴⁷ [Request](#), para. 37.

⁴⁸ [Request](#), para. 37.

⁴⁹ [Compensation Decision](#), paras. 59-61.

⁵⁰ [Compensation Decision](#), paras. 56-58.

⁵¹ [Assets Unfreezing Decision](#), paras. 8-18; [Compensation Decision](#), paras. 56-58.

⁵² [Request](#), para. 37.

Compensation Decision: his request for leave to appeal that decision was rejected.⁵³ His attempt to re-litigate the same matter before another Chamber of this Court *via* the Presidency is unwarranted.

18. *Third*, although Mr Bemba argues that he should be given an opportunity “to make his case” and “[to] provide reasoned arguments and evidential support for his claim [of financial loss]”,⁵⁴ he was already given that opportunity as an acquitted person before the Court *via* the article 85 proceedings. And he made ample use of it. Yet, at this stage, Mr Bemba is a private party—a fact that he acknowledges.⁵⁵ He lacks standing to launch further judicial proceedings at this Court. Nor does the Statute support proceedings in the manner described.

19. For the reasons above, Mr Bemba’s request to designate a Chamber to adjudicate his damages claim should be dismissed.

⁵³ [Compensation ALA Decision](#), p. 11.

⁵⁴ [Request](#), para. 42.

⁵⁵ [Compensation Decision](#), para. 59. In this context, Pre-Trial Chamber II’s reference to other procedural remedies must be read in the context of framework set out in the Statute and the [Assets Unfreezing Decision](#).

CONCLUSION AND RELIEF SOUGHT

20. The Prosecution respectfully requests the Presidency to dismiss Mr Bemba's Request. Mr Bemba's Request merely re-litigates his earlier failed submissions before other Chambers of this Court. His request to designate another Pre-Trial Chamber to re-hear those matters amounts to a potential abuse of process. Even on the merits, in the Prosecution's respectful view, the solution to this matter does not lie in further litigation before the Chambers. If it is considered necessary, the Presidency may wish to hear from the Registry on the matters highlighted in Mr Bemba's Request, so that non-judicial solutions may be found.



Fatou Bensouda, Prosecutor

Dated this 16th day of November 2020

At The Hague, The Netherlands