



Original: **English**

No.: ICC-01/05-01/08  
Date: 20 November 2018

**TRIAL CHAMBER III**

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

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

**Public**

**Public redacted version of "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", 18 October 2018**

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

**The Office of the Prosecutor**

Ms Fatou Bensouda

Mr James Stewart

Mr Jean-Jacques Badibanga

**Counsel for Mr Bemba**

Mr Peter Haynes QC

Ms Kate Gibson

**Legal Representatives of the Victims**

Ms Marie-Edith Douzima-Lawson

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the  
Defence**

Xavier-Jean Keita

**States Representatives**

**Amicus Curiae**

**REGISTRY**

---

**Registrar**

Mr Peter Lewis

**Defence Support Section**

**Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

Mr Philipp Ambach

**Trust Fund for Victims**

Mr Pieter de Baan

**Trial Chamber III** (“Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, having regard to Articles 57(3)(e), 64(6)(f), Part 9 of the Rome Statute (“Statute”), Rules 21(5) and 176(2) of the Rules of Procedure and Evidence (“Rules”), Regulations 23*bis*(2) and 24*bis* of the Regulations of the Court (“RoC”), and Regulation 35*bis* of the Regulations of the Registry (“RoR”), issues the following “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”:

### **I. Procedural background**

1. The Chamber recalls the procedural background set out in its previous “Decision on the Defence's preliminary application for reclassification of filings, disclosure, accounts, and partial unfreezing of Mr Bemba's assets” (“First Decision” and “Mr Bemba’s Request”).<sup>1</sup>
2. On 24 August 2018, the Chamber in its First Decision ordered the Registry to submit observations in relation to Mr Bemba’s requested relief to “[Reclassify] all under seal and/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” (“Reclassification Request”).<sup>2</sup> In relation to the remainder of the requested relief, the Chamber recalled its previous position that Mr Bemba should “direct further communication with respect to the repayment, if any, to the Registry”,<sup>3</sup> and that cooperation requests “were issued under Part 9

---

<sup>1</sup> Decision on the Defence's preliminary application for reclassification of filings, disclosure, accounts, and partial unfreezing of Mr Bemba's assets, 24 August 2018, ICC-01/05-01/08-3655-US-Exp, paras 1-6. (A public redacted version was filed on 16 November 2018, ICC-01/05-01/08-3655-Red). *See also* Preliminary application for reclassification of filings, disclosure, accounts and partial unfreezing of Mr. Bemba's assets, 16 August 2018, ICC-01/05-01/08-3654-Conf-Exp (A public redacted version was filed on 30 October 2018, ICC-01/05-01/08-3654-Red).

<sup>2</sup> First Decision, ICC-01/05-01/08-3655-Red, para. 7.

<sup>3</sup> First Decision, ICC-01/05-01/08-3655-Red, para. 9, quoting the Order in relation to advanced legal assistance fees, 17 July 2018, ICC-01/05-01/08-3651-Red, page 5.

of the Statute [...] [and] transmitted to States for any action which could be taken in respect of Mr Bemba's assets under their respective domestic laws".<sup>4</sup>

3. On 3 September 2018, the Registry filed the "Registry's Observations on the Defence Request for Reclassification of Information relating to Mr Jean-Pierre Bemba Gombo's Assets" ("Registry Observations").<sup>5</sup> The Registry opposes the reclassification of all under seal and all *ex parte* documents pertaining to Mr Bemba's frozen assets, *inter alia*, for the following reasons:<sup>6</sup> The Registry submits that (i) because "the amount of [Mr Bemba's] debt is significantly lower than the estimated total amount of his assets, frozen or not, of which the Defence is aware, there is no need for further disclosure";<sup>7</sup> (ii) Mr Bemba has sufficient information at hand to formulate "specific applications for lifting the seizure or freezing orders on targeted assets before the Chamber";<sup>8</sup> (iii) cooperation requests which were based on Articles 57(3)(e) and 93(1)(k) of the Statute have become "null and void" following Mr Bemba's acquittal and therefore their reclassification, together with the reclassification of all related documents, would serve no purpose at this stage;<sup>9</sup> (iv) reclassification of cooperation requests and documents provided by all relevant states in execution of them would require consultation with those States pursuant to Article 93(8)(a) of the Statute, which the Registry states would be "tremendously time-consuming";<sup>10</sup> (v) [REDACTED].<sup>11</sup> Additionally, the Registry provides further clarifications in relation to the [REDACTED].<sup>12</sup>

4. On 13 September 2018, Mr Bemba filed his "Response to Redacted version of the Registry's Observations on Mr Bemba's Request for Reclassification of

<sup>4</sup> First Decision, ICC-01/05-01/08-3655-Red, para. 8.

<sup>5</sup> Registry's Observations on the Defence Request for Reclassification of Information relating to Mr Jean-Pierre Bemba Gombo's Assets, 3 September 2018, ICC-01/05-01/08-3656-US-Exp, under seal, *ex parte*, only available to the Registry. A redacted version, under seal, *ex parte*, also available to the Defence was filed on the same day, ICC-01/05-01/08-3656-US-Exp-Red.

<sup>6</sup> Registry Observations, ICC-01/05-01/08-3656-US-Exp-Red, para. 2.

<sup>7</sup> Registry Observations, ICC-01/05-01/08-3656-US-Exp-Red, para. 6.

<sup>8</sup> Registry Observations, ICC-01/05-01/08-3656-US-Exp-Red, para. 6.

<sup>9</sup> Registry Observations, ICC-01/05-01/08-3656-US-Exp-Red, para. 7.

<sup>10</sup> Registry Observations, ICC-01/05-01/08-3656-US-Exp-Red, para. 8.

<sup>11</sup> Registry Observations, ICC-01/05-01/08-3656-US-Exp, para. 9.

<sup>12</sup> Registry Observations, ICC-01/05-01/08-3656-US-Exp-Red, paras 11-12.

Information relating to Mr Jean-Pierre Bemba Gombo's Assets" ("Mr Bemba's Response").<sup>13</sup> Mr Bemba submits, *inter alia*, that (i) the Court, in particular the Registry, as the trustee of Mr Bemba's assets with all ancillary fiduciary responsibilities,<sup>14</sup> bears central responsibility of accounting for Mr Bemba's property;<sup>15</sup> (ii) the Registry's records are insufficient for Mr Bemba to identify which assets are frozen;<sup>16</sup> and (iii) there appears to be a wealth of frozen assets of which the Registry is not aware;<sup>17</sup> (iv) Mr Bemba cannot be expected to trace his own assets and make multiple requests for the release of freezing orders, rather "[i]t is the duty of the Court to undo what it has done",<sup>18</sup> and the process for the Court to unfreeze Mr Bemba's assets should have begun three months ago (in July 2018);<sup>19</sup> (v) not only Mr Bemba but also [REDACTED] are unable to exercise their proprietary rights over real estate and bank accounts because "states and institutions continue to freeze those assets under local orders made with the apparent authority of cooperation with the Court"<sup>20</sup> and this continued interference is unlawful;<sup>21</sup> (vi) if the Registry concedes that the orders to freeze assets are "null and void" it should inform the States thereof;<sup>22</sup> (vii) there is no continuing basis for not giving Mr Bemba access to the filings and he has a "fundamental entitlement to access the audit trail as to how [his property] has been dealt with by others";<sup>23</sup> (viii) the suggestion that States have interests in concealing their cooperation with the ICC is "speculative and worrying";<sup>24</sup> and even if there are concerns about revealing identities appropriate redactions can be made;<sup>25</sup> (ix) the suggestion that it is too "time consuming" to secure the

---

<sup>13</sup> Response to Redacted version of the Registry's Observations on Mr. Bemba's Request for Reclassification of Information relating to Mr Jean-Pierre Bemba Gombo's Assets, 13 September 2018, ICC-01/05-01/08-3657-Conf-Exp (A public redacted version was filed on 30 October 2018, ICC-01/05-01/08-3657-Red).

<sup>14</sup> Mr Bemba's Response, ICC-01/05-01/08-3657-Red, paras 1-6.

<sup>15</sup> Mr Bemba's Response, ICC-01/05-01/08-3657-Red, para. 5.

<sup>16</sup> Mr Bemba's Response, ICC-01/05-01/08-3657-Red, para. 7.

<sup>17</sup> Mr Bemba's Response, ICC-01/05-01/08-3657-Red, para. 8.

<sup>18</sup> Mr Bemba's Response, ICC-01/05-01/08-3657-Red, para. 9.

<sup>19</sup> Mr Bemba's Response, ICC-01/05-01/08-3657-Red, para. 16.

<sup>20</sup> Mr Bemba's Response, ICC-01/05-01/08-3657-Red, para. 10.

<sup>21</sup> Mr Bemba's Response, ICC-01/05-01/08-3657-Red, para. 16.

<sup>22</sup> Mr Bemba's Response, ICC-01/05-01/08-3657-Red, para. 11.

<sup>23</sup> Mr Bemba's Response, ICC-01/05-01/08-3657-Red, para. 12.

<sup>24</sup> Mr Bemba's Response, ICC-01/05-01/08-3657-Red, para. 14.

<sup>25</sup> Mr Bemba's Response, ICC-01/05-01/08-3657-Red, para. 14.

agreement of States to disclose information is unpersuasive;<sup>26</sup> and (x) the relationship between the value of property frozen and the amount of money advanced to Mr Bemba has no bearing on the classification of filings or the duty to account for his property,<sup>27</sup> and in any event the values attributed by the Registry to Mr Bemba's property are either out of date or "wildly inaccurate".<sup>28</sup> Mr Bemba further submits, *inter alia*, that the Court failed to use [REDACTED] as a source for his legal fees and thereby destroyed this asset.<sup>29</sup> Moreover, he stresses that the Registry appears to be of the opinion that a Chamber order is a prerequisite to start the process of unfreezing.<sup>30</sup>

5. On 17 September 2018, Trial Chamber VII in the case against Mr. Bemba *et al* ("Article 70 case") issued its "Decision Re-Sentencing Mr Bemba [*et al*]" and sentenced Mr Bemba to, *inter alia*, a fine of € 300,000, which is to be paid within three months of the date of that decision.<sup>31</sup>
6. On 21 September 2018, the Registry filed the "Registry's Submissions in relation to Protective Measures imposed on Mr Bemba's Assets", pursuant to Regulation 24*bis*(1) of the RoC ("Registry Submissions").<sup>32</sup> The Registry submits, *inter alia*, that (i) the Appeals Chamber's judgment acquitting Mr Bemba in this case<sup>33</sup> ("Appeals Judgment") did not contain any determination that the "protective measures" imposed on Mr Bemba's assets "would cease to have effect as a result of the Judgment";<sup>34</sup> (ii) the Appeals Chamber did not instruct the Registry to notify relevant States of the Appeals Judgment, and the Registry's notification obligations are thus regulated by Regulation 35*bis* of the Regulations of the

<sup>26</sup> Mr Bemba's Response, ICC-01/05-01/08-3657-Red, para. 15.

<sup>27</sup> Mr Bemba's Response, ICC-01/05-01/08-3657-Red, para. 17.

<sup>28</sup> Mr Bemba's Response, ICC-01/05-01/08-3657-Red, para. 17.

<sup>29</sup> Mr Bemba's Response, ICC-01/05-01/08-3657-Red, para. 18.

<sup>30</sup> Mr Bemba's Response, ICC-01/05-01/08-3657-Red, para. 16.

<sup>31</sup> Trial Chamber VII, Decision Re-sentencing Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba and Mr Jean-Jacques Mangenda Kabongo, 17 September 2018, ICC-01/05-01/13-2312.

<sup>32</sup> Registry's Submissions in relation to Protective Measures imposed on Mr Bemba's Assets, 21 September 2018, ICC-01/05-01/08-3658-US-Exp, under seal, *ex parte*, only available to the Registry. A redacted version, under seal, *ex parte*, also available to the Defence was filed on 27 September 2018, ICC-01/05-01/08-3658-US-Exp-Red.

<sup>33</sup> Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III's "Judgment pursuant to Article 74 of the Statute", 8 June 2018, ICC-01/05-01/08-3636-Red.

<sup>34</sup> Registry Submissions, ICC-01/05-01/08-3658-US-Exp-Red, para. 5.

Registry,<sup>35</sup> which limits notification to “those recipients listed in the template provided for by regulation 24, sub-regulation 2”; (iii) it is of the view that the judicial authority 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”;<sup>36</sup> (iv) it understands its role, unless otherwise instructed, to be limited to “the transmission of the requests for cooperation between the Chamber and the relevant states, in accordance with Rule 176(2) of the Rules”.<sup>37</sup> Notwithstanding, the Registry informs the Chamber that it “intends to notify the relevant states of the closure of the proceedings in both the present case and the Art 70 case”.<sup>38</sup> The Registry seeks guidance from the Chamber on (i) whether the notification to relevant States in the present case of the closure of the proceedings due to Mr Bemba’s acquittal would mean that the “protective measures taken on the basis of the Chamber’s requests would be null and void,<sup>39</sup> [REDACTED];<sup>40</sup> (ii) [REDACTED]<sup>41</sup> [REDACTED];<sup>42</sup> and (iii) [REDACTED].<sup>43</sup>

7. On 8 October 2018, Mr Bemba submitted “Mr Bemba’s response to the ‘Redacted version of Registry’s Submissions in relation Protective Measures imposed on Mr Bemba’s Assets” (“Mr Bemba’s Further Response”).<sup>44</sup> Mr Bemba (i) invites the Chamber to instruct the Registry to contact the relevant States and direct them to discharge all freezing orders imposed on him and all third parties, whether over property known to the Registry or otherwise, within seven days of the order;<sup>45</sup> (ii) asks the Chamber to issue a decision disposing of all issues before it, namely

---

<sup>35</sup> Registry Submissions, ICC-01/05-01/08-3658-US-Exp-Red, para. 5, fn. 6.

<sup>36</sup> Registry Submissions, ICC-01/05-01/08-3658-US-Exp-Red, para. 6.

<sup>37</sup> Registry Submissions, ICC-01/05-01/08-3658-US-Exp-Red, para. 6.

<sup>38</sup> Registry Submissions, ICC-01/05-01/08-3658-US-Exp-Red, para. 8.

<sup>39</sup> Registry Submissions, ICC-01/05-01/08-3658-US-Exp-Red, para. 9.

<sup>40</sup> Registry Submissions, ICC-01/05-01/08-3658-US-Exp, para. 9.

<sup>41</sup> [REDACTED].

<sup>42</sup> Registry Submissions, ICC-01/05-01/08-3658-US-Exp, para. 10.

<sup>43</sup> Registry Submissions, ICC-01/05-01/08-3658-US-Exp, para. 10.

<sup>44</sup> Mr Bemba’s response to the “Redacted version of Registry’s Submissions in relation to Protective Measures imposed on Mr Bemba’s Assets”, 8 October 2018, ICC-01/05-01/08-3659-Conf-Exp, *ex parte*, only available to Mr Bemba and the Registry (A public redacted version was filed on 30 October 2018, ICC-01/05-01/08-3659-Red).

<sup>45</sup> Mr Bemba’s Further Response, ICC-01/05-01/08-3659-Red, para. 14.

the discharge of the freezing orders, the reclassification of filings and the orders for accounts, as a matter of urgency.<sup>46</sup> He emphasises that his Reclassification Request and an order to the relevant states for a full account of frozen property has been pending for seven weeks.<sup>47</sup> Mr Bemba recalls his previous submissions that there is no continuing legal basis for freezing his assets and property.<sup>48</sup> More specifically, he submits, *inter alia*, that (i) the Registry's submissions erroneously conflate the jurisdictions of Trial Chambers III and VII and are legally flawed in suggesting a link between the fine ordered in the Article 70 case and assets frozen in this case;<sup>49</sup> (ii) the Registry's suggestion that property and assets can continue to be frozen in respect of Mr Bemba's legal fees debt is "unfortunate, unfair and illegal",<sup>50</sup> and, in any event, freezing orders have no continuing practical purpose in this regard, if the Chamber takes the position that Mr Bemba is able to repay his debt through "freely disposing" of assets;<sup>51</sup> (iii) continued freezing orders over third party assets are causing daily financial loss to third persons, including [REDACTED], are manifestly unlawful<sup>52</sup> and raise questions of civil liability for damages;<sup>53</sup> and (iv) continued freezing orders over Mr Bemba's assets are "becoming cruel and inhumane and potentially interfering with his right to family life," including, "jeopardizing his ability [REDACTED]." <sup>54</sup> Mr Bemba states for example, that freezing orders on his [REDACTED].<sup>55</sup> Lastly, Mr Bemba also emphasises that he does not accept that the Registry cannot take steps to unfreeze assets in the absence of an order from the Chamber,<sup>56</sup> and, in any event, that had the Registry understood that it required a judicial order, an application to that end should have been ready to file on the day of Mr Bemba's acquittal.<sup>57</sup>

---

<sup>46</sup> Mr Bemba's Further Response, ICC-01/05-01/08-3659-Red, para. 15.

<sup>47</sup> Mr Bemba's Further Response, ICC-01/05-01/08-3659-Red, paras 1, 15.

<sup>48</sup> Mr Bemba's Further Response, ICC-01/05-01/08-3659-Red, paras 5-7, 9-10, 14-15.

<sup>49</sup> Mr Bemba's Further Response, ICC-01/05-01/08-3659-Red, paras 5-6.

<sup>50</sup> Mr Bemba's Further Response, ICC-01/05-01/08-3659-Red, para. 7.

<sup>51</sup> Mr Bemba's Further Response, ICC-01/05-01/08-3659-Red, para. 8.

<sup>52</sup> Mr Bemba's Further Response, ICC-01/05-01/08-3659-Red, para. 9.

<sup>53</sup> Mr Bemba's Further Response, ICC-01/05-01/08-3659-Red, para. 10.

<sup>54</sup> Mr Bemba's Further Response, ICC-01/05-01/08-3659-Red, para. 11.

<sup>55</sup> Mr Bemba's Further Response, ICC-01/05-01/08-3659-Red, para. 11.

<sup>56</sup> Mr Bemba's Further Response, ICC-01/05-01/08-3659-Red, para. 12.

<sup>57</sup> Mr Bemba's Further Response, ICC-01/05-01/08-3659-Red, para. 12.



## II. Analysis

8. In light of the submissions received, the Chamber considers it necessary to generally clarify the operation of the cooperation regime under Part 9 of the Statute with respect to seeking the freezing and seizure of assets. Moreover, although not considering itself to be in a position to instruct the Registry as to how to conduct its cooperation activities with States, the Chamber recognises the need for clarifications as to its view on the Registry's role following Mr Bemba's acquittal.
9. The Chamber recalls that the effective functioning of the Court, in terms of *inter alia*, the arrest and surrender of suspects, evidence gathering and the freezing and seizure of assets, is heavily dependent on State cooperation due to the absence of any direct enforcement powers. For that reason, Part 9 of the Statute establishes a unique vertical relationship between the Court and States by imposing an unqualified obligation on States to "cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court".<sup>58</sup>
10. The Court issues requests to States specifying the required cooperation and States implement the request by providing the specified cooperation pursuant to Article 86 of the Statute. The determination of how it will meet its obligation to cooperate with the Court is entirely up to the State, with the caveat set out in Article 88 of the Statute, which stipulates that procedures must be available for all forms of cooperation specified in Part 9 of the Statute.
11. Correspondingly, actions directed at freezing or seizure are pursued exclusively through the cooperation regime of Part 9 of the Statute, including such action taken under Article 57(3)(e) of the Statute and Article 93(1)(k) of the Statute. Therefore, the Court itself does not order the freezing or seizure of assets, but

---

<sup>58</sup> Article 86 of the Statute. *See further*, A. Cassese/P. Gaeta/J. R. W. D. Jones (ed.), *The Rome Statute of the International Criminal Court: A Commentary*, Volume II (2002), pp. 1589 et seq; Summary Record of the 2<sup>nd</sup> plenary meeting, A/CONF.183/SR.2, 20 November 1998, paras 36, 47, 57, 86; Summary Record of the 3<sup>rd</sup> plenary meeting A/CONF.183/SR.3, 20 November 1998, paras 42, 87; Summary Record of the 4<sup>th</sup> plenary meeting, A/CONF.183/SR.4, 20 November 1998, paras 6, 14, 43, 58, 66; Summary Record of the 6<sup>th</sup> plenary meeting, A/CONF.183/SR.6, 20 November 1998, paras 8, 20, 57, 101.

rather orders that cooperation requests be sent to States for them to do so. The State then decides to either directly enforce the Court's request for freezing or seizure if so permitted under domestic law, or to use the information provided in the Court's request to initiate domestic proceedings to preserve the assets. Irrespective of which approach the State applies, the assets are ultimately frozen or seized on the basis of actions taken by that State under its domestic law.

12. By the same token, the lifting of coercive measures, including the unfreezing of assets, must be done under domestic law. The Chamber thus notes that, contrary to the submissions received in this regard,<sup>59</sup> it is not the competent body to order the lifting of any such orders.
13. The Chamber further clarifies that, contrary to the submissions advanced,<sup>60</sup> an acquittal or other cessation of proceedings does not render the original cooperation requests nor the coercive measures invalid, null or void. 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.
14. The Chamber acknowledges that in order to enable States to assess what steps should be taken with reference to any existing orders under domestic law it is crucial that they are notified of any relevant decision, in particular judgments, as soon as reasonably practicable. In the case of an acquittal or the cessation of the proceedings for other reasons, the States which have cooperated in the freezing or seizure of assets need to be notified as soon as practicable that there is no longer any ongoing investigation or prosecution against an accused, as this is the

---

<sup>59</sup> Registry Submissions, ICC-01/05-01/08-3658-US-Exp-Red, para. 6; Mr Bemba's Further Response, ICC-01/05-01/08-3659-Red, para. 15.

<sup>60</sup> Registry Observations, ICC-01/05-01/08-3656-US-Exp-Red, para. 7; Registry Submissions, ICC-01/05-01/08-3658-US-Exp-Red, para. 9; Mr Bemba's Response, ICC-01/05-01/08-3657-Red, para. 11.

sole basis for any cooperation obligation under Article 86 of the Statute. In this context, the Chamber 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, as opposed to other cooperation requests, which are usually executed and closed before the conclusion of a case.

15. The Chamber notes the Registry's submissions, confirming that it intends to notify the relevant States of the closure of the proceedings against Mr Bemba, *inter alia* in the present case.<sup>61</sup> It emphasises that States must be made aware that, following Mr Bemba's acquittal, there is no longer any investigation or prosecution against Mr Bemba in this case, and States are thus under no obligation to comply with *any* of the standing requests for cooperation. It is thus up to 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. This will in turn trigger legal consequences under the respective domestic law, as illustrated above, including the unfreezing of assets, where applicable. No further action is required from the Chamber in this regard.

16. The Chamber has carefully considered the request of Mr Bemba to have access to all under seal and/or *ex parte* filings, orders or decisions in the instant case concerning requests for cooperation to freeze Mr Bemba's assets. The Chamber recalls the integral nature of the cooperation regime under Part 9 of the Statute to the effective functioning of the Court. Central to that regime is the relationship of trust between the Court and States Parties and the need for confidentiality in the communication of requests and responses. While confidentiality is not absolute and can be lifted in particular instances, it must be demonstrated that there is a specific need for that action to be taken.

---

<sup>61</sup> Registry Submissions, ICC-01/05-01/08-3658-US-Exp-Red, para. 8.

17. The Chamber is of the view 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. Mr Bemba advances the argument that he needs to review these requests because he requires the Court's assistance for tracing his own assets. Mr Bemba's submission that he cannot be expected to trace his assets and make multiple requests for the release of freezing orders is surprising. The Chamber notes that the location of assets in numerous jurisdictions leading to multiple freezing orders is not a result of action on the part of the Court or the States. 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. Moreover, in these circumstances it 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. Accordingly, the Chamber is of the view that the classification level ought to be maintained at this point.

18. The Chamber notes, however, that 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 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, or for which he faces difficulties to gain access. However, the Chamber notes in this regard that it does not have the power to order States to, for instance, "provide a full

accounting of the property frozen,” as requested by the Defence.<sup>62</sup> Should Mr Bemba thus face difficulties to determine the status of his assets through discussions with the relevant States, the Chamber encourages the Registry to assist and facilitate Mr Bemba’s queries, as appropriate and feasible, including by communicating with the relevant States about specific issues.

19. As regards Mr Bemba’s outstanding debts for the advanced legal fees, the Chamber recalls its previous decisions in this regard and notes that Mr Bemba himself has acknowledged this debt.<sup>63</sup> The outstanding legal debts are based on a contractual obligation between the Court and Mr Bemba. As indicated in its preceding decisions, the Chamber is of the view that the Registry is the competent body to conduct and arrange the repayment process in the way it sees fit, in consultation with Mr Bemba.<sup>64</sup>

20. Lastly, the Chamber notes that the Court’s legal framework does not prohibit the Registry from seeking States’ *voluntary* cooperation in securing the repayment of the advanced legal assistance fees. The Chamber cautions however, 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.

21. The Chamber notes that the question as to whether or not freezing orders should remain in force for the purpose of securing the fine imposed in the Article 70 Case is outside of the purview of this Chamber and must be addressed by the Registry with Trial Chamber VII.

## **FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

---

<sup>62</sup> Mr Bemba’s Further Response, ICC-01/05-01/08-3659-Red, para. 1, with reference to Mr Bemba’s Request, ICC-01/05-01/08-3654-Red.

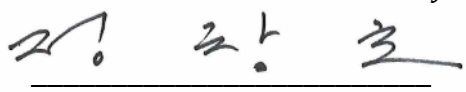


<sup>63</sup> Mr Bemba’s Request, ICC-01/05-01/08-3654-Red, para. 39.

<sup>64</sup> Order in relation to advanced legal assistance fees, ICC-01/05-01/08-3651-Red, page 5: Mr Bemba should “direct further communication with respect to the repayment, if any, to the Registry”. *See also* First Decision, ICC-01/05-01/08-3655-Red, para. 9.

**REJECTS** the Defence's Reclassification Request, request to order States to lift coercive measures and to provide accounts for each frozen asset;

**ENCOURAGES** the Registry to take all necessary steps in accordance with this decision.

Done in both English and French, the English version being authoritative.

 _____ <b>Judge Chang-ho Chung</b>	 _____ <b>Judge Geoffrey Henderson</b>	 _____ <b>Judge Kimberly Prost</b>
---	--	---

Dated this 20 November 2018

At The Hague, The Netherlands