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

Date: 10 October 2008

PRE-TRIAL CHAMBER III

Before: Judge Fatoumata Dembele Diarra, Presiding Judge
Judge Hans-Peter Kaul
Judge Ekaterina Trendafilova

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

Public Redacted

**Decision on the Defence's Application for Lifting the Seizure of Assets and
Request for Cooperation to the Competent Authorities of Portugal**

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

The Office of the Prosecutor

Fatou Bensouda, Deputy Prosecutor
Petra Kneuer, Senior Trial Lawyer

Counsel for the Defence

Nkwebe Liriss
Tjarda E. Van der Spoel
Aimé Kilolo-Musamba

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Competent Authorities of the Republic of
Portugal

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section Other**

1. **Pre-Trial Chamber III** (the “Chamber”) of the International Criminal Court (the “Court”) has been seized of an “Application for the Lifting of the Seizure” filed on 26 August 2008 by the counsels of Mr Jean-Pierre Bemba Gombo (“Mr Jean-Pierre Bemba”).¹

2. The present decision is classified as confidential although it refers to the existence of documents and, as the case may be, to a limited extent to their content, which have been submitted and are currently treated as under seal or/and *ex parte*. The Chamber is of the view that the present classification is required by the principle of fairness of proceedings for the Defence. Moreover, the Chamber considers that references in the present decision to documents under seal or/and *ex parte* have been kept to a minimum and are not inconsistent with the nature of the documents referred to.

3. The Chamber recalls that on 9 May 2008 the Prosecutor filed the “Prosecutor’s Application for Warrant of Arrest under Article 58” together with a request to freeze or seize the “property and assets” of Mr Jean-Pierre Bemba.²

4. On 27 May 2008 the Chamber issued a request for cooperation to the Republic of Portugal to identify, trace, freeze and seize any property and assets of Mr Jean-Pierre Bemba located on its territory, subject to the rights of *bona fide* third parties.³ This request was further executed by the competent authorities of the Republic of Portugal.

¹ ICC-01/05-01/08-81-Conf-tENG.

² ICC-01/05-01/08-128-Conf-AnxA, para. 131.

³ ICC-01/05-01/08-8-US-Exp.

5. On 9 July 2008 Mr Jean-Pierre Bemba submitted an application for legal assistance to the Registrar (the “Application for Legal Assistance”).⁴

6. On 25 August 2008 the Registrar rendered a decision entitled “*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*” (the “Registrar’s Provisional Decision”).⁵ In that decision, the Registrar provisionally rejected the Application for Legal Assistance to be paid by the Court.

7. The Chamber notes that the Registrar’s Provisional Decision was based on a financial investigation conducted on the assets of Mr Jean-Pierre Bemba which is still ongoing.⁶

8. The Chamber observes that, in taking her decision, the Registrar estimated (i) the costs required to provide basic care to the dependants of Mr Jean-Pierre Bemba and (ii) the monthly costs for a legal team acting in the pre-trial phase of the proceedings compared to (iii) the value of the assets of Mr Jean-Pierre Bemba;⁷ more specifically :

- (i) The Registrar made a calculation of the monthly expenses of Mr Jean-Pierre Bemba’s six dependants (a wife and 5 children). Based on standardised criteria, the Registrar concluded that the monthly expenditure per person in the Flemish region is currently €1,182.30. The monthly amount required for Mr Jean-Pierre Bemba to comply with his familial obligations is estimated at €6,109.84.

⁴ ICC-01/05-01/08-62-Conf-Exp, para. 10.

⁵ ICC-01/05-01/08-76.

⁶ ICC-01/05-01/08-76, p. 7.

⁷ ICC-01/05-01/08-76-Conf-Exp-Anx4 and ICC-01/05-01/08-76-Conf-Exp-Anx6.

- (ii) Based on the Court's legal assistance scheme, the Registrar also estimated the costs of a Defence team acting during the pre-trial phase and submitted that the monthly cost for a Defence team amounts to €30,150.
- (iii) The Registrar provisionally estimated the value of the assets of Mr Jean-Pierre Bemba and calculated the monthly value of those assets at [REDACTED].

9. Considering the above information, the Registrar concluded that Mr Jean-Pierre Bemba is not indigent and provisionally rejected his Application for Legal Assistance to be paid by the Court⁸ because his "assets enable him to fulfil his obligations to his dependants and the costs of his legal representation according to the Court's legal assistance scheme remuneration rates".⁹

10. On 26 August 2008 the Defence filed an application entitled "Requête en mainlevée de saisie" in which Mr Jean-Pierre Bemba sought for lifting the seizure of his assets including the "lifting of the seizure of (...) his [REDACTED] bank account in Portugal"¹⁰. In his application for lifting the seizure of his assets, Mr Jean-Pierre Bemba and his counsels asserted that the seizure order should be lifted in view of allowing Mr Jean-Pierre Bemba to cover: 1) the family expenses including maintenance, education and housing in order to avoid any risk of indigence and 2) the costs of the Defence including legal fees.¹¹

11. On 19 September 2008 the Prosecutor filed the "Prosecutor's Response to Defence Application for the Lifting of Seizure".¹² Concurring with the observations of the Registrar, the Prosecutor submitted that the Defence did not provide any evidence of the alleged indigence and "in any case, the alleged indigence is not a reason to

⁸ ICC-01/05-01/08-76.

⁹ ICC-01/05-01/08-76-Conf-Exp-Anx6-tENG.

¹⁰ ICC-01/05-01/08-81-Conf-tENG, p. 10.

¹¹ ICC-01/05-01/08-81-Conf-tENG.

¹² ICC-01/05-01/08-110-Conf.

unfreeze the assets and monies” of Mr. Jean-Pierre Bemba.¹³ The Prosecutor suggested that alternative solutions such as limited remittances for reasonable and essential expenses on a scheduled basis and based on a billing system were available.

12. On 8 October 2008 the Chamber convened a status conference *ex parte* and *in camera* with Mr Jean-Pierre Bemba and his counsels during which they raised concerns with regard to the fact that all assets of Mr Jean-Pierre Bemba were frozen and that he was thus facing a difficult financial situation to support his family and to pay the fees of his counsels.¹⁴

13. The Chamber notes articles 57(3)(e), 67, 93(1)(k), 96 and 97 of the Rome Statute (the “Statute”) and rules 99 and 176(2) of the Rules of Procedure and Evidence.

14. The Chamber recalls that the Registrar’s Provisional Decision is based on a estimation of the financial resources of Mr Jean-Pierre Bemba which include assets that have been frozen or seized at the Court’s request, such as a bank account in Portugal [REDACTED].¹⁵

15. As to the expenses for the Defence of Mr Jean-Pierre Bemba, the Chamber underlines that the disclosure process has just started. The Chamber takes note that the Defence team has to analyse in a short period of time a significant amount of documents. The Chamber considers that at this stage of the proceedings, it is critical that the Defence has adequate time and facilities for the preparation of the confirmation hearing which is scheduled to take place on 4 November 2008.

¹³ ICC-01/05-01/08-110-Conf, para. 14.

¹⁴ ICC-01/05-01/08-T-7-CONF-EXP-ENG ET, p. 5, lines 5 to 8.

¹⁵ ICC-01/05-01/08-76-Conf-Exp-Anx6-tENG, p. 2.

16. Furthermore, as to the expenses of Mr Jean-Pierre Bemba to support his family, the Chamber acknowledges that he has financial obligations to his family and must be able to pay for the basic needs of his wife and children.

17. Accordingly, the Chamber partially grants the Defence's request to lift the seizure order and temporarily authorises the competent authorities of the Republic of Portugal to release the amount of €36,260¹⁶ on a monthly basis from account [REDACTED] at the bank [REDACTED] of Portugal until a decision on the confirmation of charges has been issued. The date of issuance of this decision will be notified to the competent authorities of the Republic of Portugal in due course.

18. However, the Chamber reserves its right to review its present decision in case of any change of circumstances especially in the event that additional information is provided to the Chamber with regard to the financial resources of Mr Jean-Pierre Bemba.

FOR THESE REASONS THE CHAMBER

a) requests the competent authorities of the Republic of Portugal to authorise temporarily the release of the amount of €36,260 on a monthly basis from account [REDACTED] in Portugal as of 1 October 2008 until a decision on the confirmation of charges has been issued.

b) requests the competent authorities of the Republic of Portugal to inform the Court in accordance with article 96(3) of the Statute of any specific requirements under its national law in order to execute the present request.

¹⁶ See for the calculation in para. 8 (i) and (ii) of this decision

c) requests the competent authorities of the Republic of Portugal to consult with the Court in accordance with article 97 of the Statute on any difficulty encountered in implementing the present decision.

d) orders the Registrar to transmit the present decision to the competent authorities of the Republic of Portugal and to report to the Chamber no later than 3 November 2008 on the status of its implementation.

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

[signed]
Judge Fatoumata Dembele Diarra
Presiding Judge

[signed]
Judge Hans-Peter Kaul

[signed]
Judge Ekaterina Trendafilova

Dated this Friday 10 October 2008

At The Hague, The Netherlands