

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

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

Public Document

**Redacted Version of Decision on the Defence Application for Review of the
Registrar's Decision of 15 October 2010 on the Application for Adjustment of the
Expenses and Fees of the Defence (ICC-01/05-01/08-1007-Conf)**

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

The Office of the Prosecutor

Ms Fatou Bensouda

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Counsel for the Defence

Mr Nkwebe Liriss

Mr 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

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Mr Esteban Peralta Losilla

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Mr Marc Dubuisson

Trial Chamber III ("Trial Chamber" or "Chamber") of the International Criminal Court ("Court" or "ICC"), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* hereby delivers the following Decision on the "Defence Application for Review of the Registrar's Decision of 15 October 2010 on the Application for Adjustment of the Expenses and Fees of the Defence".¹

I. Background and Submissions

1. On 23 September 2010, the Chamber issued its "Decision on the defence request for adjustment of fees advanced by the Registry pursuant to Trial Chamber III's Decision on legal assistance for the accused of 20 October 2009", ("Chamber's Decision on adjustment of fees" or "Chamber's 23 September Decision") referring the defence request to the Registry as the competent body to deal with such a request.²

Registrar's Decision

2. On 15 October 2010, pursuant to the Chamber's aforementioned Decision, the Registrar issued her decision on the defence request for adjustment of fees advanced by the Registry ("Registrar's Decision").³
3. The Registrar summarises the arguments made by the defence on 11 August 2010 in its "Application for Adjustment of the Expenses and Fees of the

¹ Demande de révision de la décision du Greffe du 15 Octobre 2010 sur la demande de réajustement des frais et honoraires de la Défense, 20 October 2010, ICC-01/05-01/08-963-Conf and Conf-Exp-Anx-A. A translation of the Application was filed on 1 November 2010: Application for Review of the Registrar's Decision of 15 October 2010 on the Application for Adjustment of the Expenses and Fees of the Defence, ICC-01/05-01/08-963-Conf-tENG.

² Decision on the defence request for adjustment of fees advanced by the Registry pursuant to Trial Chamber III's Decision on legal assistance for the accused of 20 October 2009, 23 September 2010, ICC-01/05-01-08-897-Conf.

³ Décision du Greffier relative à la « Requête aux fins d'ajustement des frais et honoraires de la Défense avancés par le Greffe conformément à l'ordonnance de la Chambre de Première Instance III intitulée 'Decision on legal assistance for the Accused' du 20 octobre 2009 » déposée devant la Chambre de première instance III le 11 août 2010 par les Conseils de Jean-Pierre Bemba Gombo, 15 October 2010, ICC-01/05-01/08-958-Conf and Conf-Annexes 1 – 3 ; and public redacted version of Annex 1, ICC-01/05-01/08-958-Anx1-Red, filed on 25 October 2010.

Defence Provided by the Registry pursuant to the Order of Trial Chamber III entitled Decision on legal assistance for the Accused of 20 October 2009”⁴ (“defence Application” or “Application”) and also refers to the reasons why the defence sought leave to file a reply⁵ which was ultimately rejected *in limine* by the Chamber. In view of this, the Registry informs that it sent a letter to the defence on 27 September 2010, inviting the defence to submit any observations in writing that it considered appropriate to make at this stage, as well as any other information that it considered relevant for the Registrar to examine in this regard so that the Registrar could make an informed decision on the defence Application, pursuant to the Chamber’s 23 September Decision.⁶

4. The Registrar informs that the defence responded to this invitation by email on 28 September 2010, submitting that its request for leave to reply was intended “to indicate that although the sums allocated did not constitute legal assistance paid by the Court (Legal Aid), they should nonetheless conform to the standards [for legal assistance], as rightly recognised by Trial Chamber III.” The Registrar submits that this refers to paragraph 28 of the Chamber’s 23 September Decision.⁷
5. The Registrar reports that in conformity with the Trial Chamber’s instructions, the Registry has continued its financial investigations into Mr Jean-Pierre Bemba Gombo’s (“Mr Bemba”) assets in collaboration with the Office of the Prosecutor (“OTP” or “prosecution”) and with the Chamber’s

⁴ Application for Adjustment of the Expenses and Fees of the Defence Provided by the Registry pursuant to the Order of Trial Chamber III entitled Decision on legal assistance for the Accused of 20 October 2009, 11 August 2010, ICC-01/05-01/08-852-Conf-tENG, notified on 27 August 2010; Requête aux fins d’ajustement des frais et honoraires de la Défense avancés par le Greffe conformément à l’ordonnance de la Chambre de Première Instance III intitulée ‘Decision on legal assistance for the Accused’ du 20 Octobre 2009, 11 August 2010, ICC-01/05-01/08-852-Conf and public redacted version, ICC-01/05-01/08-852-Red, notified on 11 August 2010.

⁵ Demande d’autorisation aux fins de répliquer aux observations du Greffe sur la demande d’ajustement des frais et honoraires de la Défense, 30 August 2010, ICC-01/05-01/08-868.

⁶ ICC-01/05-01/08-958-Conf-Anx1, paragraph 6.

⁷ ICC-01/05-01/08-958-Conf-Anx1, paragraph 7.

assistance. The Registry has regularly informed the Chamber of the results of these investigations between 4 November 2009 and 23 September 2010.⁸

6. In her Decision the Registrar recalls that after the defence filed its Application, the Registrar set out her observations in a filing of 25 August 2010 ("Observations of 25 August 2010"),⁹ basing these observations on the results of the financial investigations and some defence submissions, confirming that the conditions set by the Chamber in its 20 October 2009 Decision had been satisfied in appearance only and were no longer being fulfilled.¹⁰
7. The Registrar makes her decision on the legal basis of the three successive Chamber decisions regarding advancement of fees to pay the defence's expenses (from 23 October 2009,¹¹ 4 November 2009¹² and 23 September 2010¹³).¹⁴
8. It is submitted in the Registrar's Decision that the Chamber draws a clear distinction between the terms of administering and controlling the advance payment of fees, which it has always intended to align with those applicable to the legal assistance scheme, and the amount advanced for expenses, which it considers to fall under the initial authority of the Registrar.¹⁵

⁸ ICC-01/05-01/08-958-Conf-Anx1, paragraph 10.

⁹ Observations du Greffier relatives à la "Requête aux fins d'ajustement des frais et honoraires de la Défense avancés par le Greffe conformément à l'ordonnance de la Chambre de Première Instance III intitulée « Decision on legal assistance for the Accused » 25 August 2010, ICC-01/05-01/08-863-Conf-Exp and Conf-Exp-Anx1 and confidential redacted version notified 25 August 2010, ICC-01/05-01/08-863-Conf-Exp-Red and ICC-01/05-01/08-863-Conf-Exp-Red2 and public redacted version notified 24 September 2010, ICC-01/05-01/08-863-Red. A translation was provided on 10 September 2010: Observations of the Registrar on the "Application for Adjustment of the Expenses and Fees of the Defence provided by the Registry pursuant to the Order of Trial Chamber III entitled Decision on legal assistance for the Accused of 20 October 2009", ICC-01/05-01/08-863-Conf-Exp-tENG.

¹⁰ ICC-01/05-01/08-958-Conf-Anx1, paragraph 11.

¹¹ Decision on legal assistance for the accused, 20 October 2009, ICC-01/05-01/08-567-US-Exp and public redacted version notified 26 October 2009, ICC-01/05-01/08-567-Red.

¹² Decision on the defence application to lift Order iii) of the "Decision on legal assistance" dated 20 October 2009, 4 November 2009, ICC-01/05-01/08-596-US-Exp and public redacted version notified 19 November 2009, ICC-01/05-01/08-596-Red.

¹³ ICC-01/05-01/08-897-Conf.

¹⁴ ICC-01/05-01/08-958-Conf-Anx1, paragraph 12

¹⁵ ICC-01/05-01/08-958-Conf-Anx1, paragraph 16.

9. The position enunciated in the Observations of 25 August 2010 is maintained in the Registrar's Decision, namely that the Application constitutes a challenge to the Chamber's Decisions of 20 October and 4 November 2009 because the defence is alleging the existence of new circumstances.¹⁶
10. The Registrar argues that the Application is essentially based on the fact that the Chamber's 20 October 2009 Decision stipulates that the payment of expenses should be advanced "until there is a material change in circumstances" and that the imminent commencement of the trial constitutes a new circumstance which justifies aligning the expenses advanced to the defence with the amounts fixed under the legal assistance scheme.¹⁷
11. Consistent with the Observations of 25 August 2010, the Registrar submits that the imminence of the trial could not constitute a new circumstance that would justify an adjustment in the expenses advanced, since the circumstance was foreseeable at the time the Chamber fixed the advance at 30, 150 Euros per month and the Chamber did not see fit to include in its order a provision for adjustment of the amount according to the different stages of the case.¹⁸
12. Further the Chamber's attention is again drawn to the Registrar's observations that Mr Bemba and his defence team had not taken any serious measures or appropriate steps to secure the release of Mr Bemba's property and assets in order to obtain the necessary resources for his legal assistance, including failing to meet condition (i) in the Chamber's 20 October 2009 Decision "to secure an up-to-date sworn declaration from the accused, setting out the current position as regards the means over which he has direct or

¹⁶ ICC-01/05-01/08-958-Conf-Anx1-tENG, paragraph 18.

¹⁷ ICC-01/05-01/08-958-Conf-Anx1-tENG, paragraph 20.

¹⁸ ICC-01/05-01/08-958-Conf-Anx1-tENG, paragraph 21.

indirect enjoyment or the power freely to dispose, together with all the relevant information (printed or otherwise) available to him on this issue”.¹⁹

13. In this regard, despite the Registrar’s express invitation to respond to these observations, the defence has not provided any information or legal argument tending to justify his lack of cooperation or to clarify his financial situation.²⁰
14. [REDACTED] the Registrar submits that nearly a year later the defence has done nothing to release the monies necessary to fund itself and to reimburse monies advanced by the Court.²¹
15. Finally, in considering the Application, the Registrar has noted, *inter alia*, the need to ensure that the trial is fair and expeditious and conducted with full respect for the rights of the accused and her responsibility to account for the financial administration of the Court to the Assembly of States Parties, pursuant to the Financial Regulations and Rules.²²
16. The Registrar submits that she has no choice but to end the advance payment of fees to the defence for Mr Bemba’s benefit pursuant to the decisions of the Chamber of 20 October 2009 and 4 November 2009; however, in order to prevent the Registrar’s Decision causing additional delay in the proceedings, [REDACTED] adjusting her decision as follows:²³

- (i) To continue to advance the sum of 30, 150 Euros that has been advanced on a monthly basis in accordance with the

¹⁹ ICC-01/05-01/08-958-Conf-Anx1-tENG, paragraph 22.

²⁰ ICC-01/05-01/08-958-Conf-Anx1-tENG, paragraph 24 and ICC-01/05-01/08-958-Conf-Anx2.

²¹ ICC-01/05-01/08-958-Conf-Anx1-tENG, paragraph 25.

²² ICC-01/05-01/08-958-Conf-Anx1-tENG, paragraphs 28 – 32.

²³ ICC-01/05-01/08-958-Conf-Anx1, paragraphs 24 and 50.

Chamber's Decisions of 20 October and 4 November 2009 for a renewable period of three months;²⁴

- (ii) To invite the accused and the defence team to communicate with the Defence Support Section in order to indicate what measures are being taken to release the funds needed to finance the defence team and the reimbursement of amounts previously advanced by the Registry;²⁵
- (iii) To commit to assisting the defence and Mr Bemba in determining and implementing the most appropriate measures for quickly accessing the funds needed to finance the defence team and reimbursing the amounts advanced by the Registry – in particular the defence can rely on assistance from the Registry, as a channel of communication from the Court, to issue potentially necessary requests for cooperation to the national authorities;²⁶
- (iv) For a renewable period of three months during which the advance of the defence expenses will continue to apply, the Registry authorises, under the terms of paragraph 28 of the Chamber's 23 September 2010 Decision, expenditure by the defence with a view to completing the necessary steps for the release of the required funds to the defence team and the repayment of amounts previously advanced by the Registry as it deems appropriate;²⁷
- (v) If, after the initial period of three months referred to in (i), the defence is still unable to free up all or part of the funds needed to finance the defence team and the reimbursement

²⁴ ICC-01/05-01/08-958-Conf-Anx1, paragraph 51(i).

²⁵ ICC-01/05-01/08-958-Conf-Anx1, paragraph 51(ii).

²⁶ ICC-01/05-01/08-958-Conf-Anx1, paragraph 51(iii).

²⁷ ICC-01/05-01/08-958-Conf-Anx1, paragraph 51(iv).

of amounts previously advanced by the Registry, the Registry will decide whether the steps taken during this period by the defence for the release of funds were satisfactory or not:

- If the Registry considers that the defence did what could be done to free up funds – but for reasons beyond their control, the funds have yet to arrive – the advance fees will be renewed for a new renewable period of three months;
 - Otherwise, the Registrar will immediately stop the advance of funds;²⁸
- (vi) The review mentioned in paragraph (v) will be renewed every three months until the termination of advance funding;²⁹
- (vii) Upon the release of amounts paid by Mr Bemba, priority will be allocated to repayment of sums already advanced by the Registry and, once this refund is completed, the amounts released will substitute all or part of the advanced funds;³⁰
- (viii) The advance of funds by the Court will finally end when Mr Bemba is able to finance his own defence, or by decision of the Registrar pursuant to (v) above.³¹

Defence application for review

17. Under the terms of Regulation 83(4) of the Regulations of the Court, the defence filed an application on 20 October 2010 requesting a review of the Registrar's Decision ("Application for Review"), submitting that the Decision

²⁸ ICC-01/05-01/08-958-Conf-Anx1, paragraph 51(v).

²⁹ ICC-01/05-01/08-958-Conf-Anx1, paragraph 51(vi).

³⁰ ICC-01/05-01/08-958-Conf-Anx1, paragraph 51(vii).

³¹ ICC-01/05-01/08-958-Conf-Anx1, paragraph 51(viii).

should be rescinded as it manifestly violates the Trial Chamber's Decisions of 4 November 2009 and 23 September 2010.³²

18. The defence submits that the Chamber's 23 September 2010 Decision did not give the Registrar a general mandate to review the whole of the previously rendered decision of 4 November 2009 and that the Registrar has confused her powers to review a decision on the indigence of an accused with the Chamber's authority to rule on the principle of advancing funds in order to guarantee a fair trial to a non-indigent individual unable to access assets as a result of the Court's own actions.³³ In this regard the defence argues that the Registrar has arrogated the power to decide to reverse the Chamber's Decision of 4 November 2009 which awarded the defence an advancement of fees until there was a change in circumstances and that if the Registrar had considered it necessary for the Chamber's 4 November 2009 Decision to be revised then the Registrar should have applied to the Chamber for review or lodged an appeal.³⁴

19. The defence further maintains that it is not in a position to reimburse the Registry for the fees so far advanced due to the accused's assets still being frozen and the estate of Mr Bemba's late father not yet being settled.³⁵ The defence also submits that the Registry's allegations that the defence has not taken any concrete steps to make available the necessary funds to enable it to operate are wrong.³⁶

20. Finally the defence requests the Chamber to order the Registry to comply with the Chamber's Decision of 23 September 2010 by advancing funds to the

³² Demande de révision de la décision du Greffe du 15 Octobre 2010 sur la demande de réajustement des frais et honoraires de la Défense, 20 October 2010, ICC-01/05-01/08-963-Conf-Exp and English translation notified 2 November 2010, ICC-01/05-01/08-963-Conf-tENG.

³³ ICC-01/05-01/08-963-Conf-tENG, paragraphs 3 and 4.

³⁴ ICC-01/05-01/08-963-Conf-tENG, paragraphs 5 and 6.

³⁵ ICC-01/05-01/08-963-Conf-tENG, paragraphs 13 – 15.

³⁶ ICC-01/05-01/08-963-Conf-tENG, paragraphs 16 and 17.

defence in accordance with the minimum provided for under the legal assistance scheme for a defence team at trial stage, and to do so retroactively while adhering to the amount fixed for each stage of the proceedings (pre-trial and trial stages).³⁷

Registrar's observations on the defence application for review

21. On 22 October 2010, the Registrar submitted "Observations on the defence Application for Review of the Registry's Decision of 15 October 2010"³⁸ in which the Registrar acknowledges that the Registry is neither a party nor a participant in the proceedings and is therefore not authorised to respond to the defence Application for Review. Nonetheless, the Registry makes the submissions to the Chamber pursuant to Regulation 24bis(l) of the Regulations of the Court in order to properly discharge the Registrar's functions to provide certain clarifications on the defence allegations of the Registry's non-compliance with Chamber decisions.³⁹

22. The Registrar notes that the defence Application for Review relies on the defence and Registry's divergent interpretations of the Chamber's 23 September 2010 Decision. The defence interprets this Decision as meaning that the Registrar should have aligned the amount of defence expenses advanced to Mr Bemba with the legal assistance scheme whereas the Registrar interprets it as drawing a distinction between the modalities of administration and control of the advance payment of expenses which must accord with the modalities of administration and control governing legal assistance on the one hand, and with the amount of expenses advanced,

³⁷ ICC-01/05-01/08-963-Conf-tENG, paragraph 25.

³⁸ Observations relatives à la Demande de révision de la Décision du Greffe du 15 Octobre 2010, 22 October 2010, ICC-01/05-01/08-970-Conf and translation notified on 1 November 2010, ICC-01/05-01/08-970-Conf-tENG.

³⁹ ICC-01/05-01/08-970-Conf-tENG, paragraph 2.

which the Chamber referred to the Registrar as the competent authority, on the other hand.⁴⁰

23. In addition, the Registrar submits she made it clear in her Decision that she was interpreting the defence request as contesting the Chamber's Decisions of 20 October and 4 November 2009 and therefore the Chamber was aware of this interpretation and did not discount it in its 23 September 2010 Decision. This interpretation was also not challenged by the defence.⁴¹

24. The Registrar observes that despite being given the opportunity to raise further arguments with the Registrar prior to her rendering her Decision, the defence did not bring to the Registrar's attention the arguments raised in paragraphs 3 to 6 and 13 to 17 of its Application for Review and therefore the Registrar observes that these should not now be considered admissible by the Chamber.⁴²

25. Finally, the Registrar notes that the matter of the administration and control of the use of monies advanced by the Court, which is addressed in the defence Application for Review, was adjudicated in the Chamber's 23 September Decision and not addressed in the Registrar's Decision, and that it is therefore not relevant for the purposes of the present review.⁴³

II. Relevant Provisions

26. In accordance with Article 21(1) of the Rome Statute ("Statute"), the Trial Chamber has considered the following provisions:

Article 64 of the Statute
Functions and powers of the Trial Chamber
 [...]

⁴⁰ ICC-01/05-01/08-970-Conf-tENG, paragraph 5.

⁴¹ ICC-01/05-01/08-970-Conf-tENG, paragraphs 7 and 8.

⁴² ICC-01/05-01/08-970-Conf-tENG, paragraph 9.

⁴³ ICC-01/05-01/08-970-Conf-tENG, paragraph 10.

2. The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused [...].

Article 67 of the Statute

Rights of the accused

1. In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:

[...]

(b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence;

(c) To be tried without undue delay;

(d) Subject to Article 63, paragraph 2, to be present at the trial, to conduct the defence [...] through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court in any case where the interests of justice so require, and without payment if the accused lacks sufficient means to pay for it;

Section 4 of the Regulations of the Court

Legal assistance paid by the Court

Regulation 83

General scope of legal assistance paid by the Court

1. Legal assistance paid by the Court shall cover all costs reasonably necessary as determined by the Registrar for an effective and efficient defence, including the remuneration of counsel, his or her assistants as referred to in Regulation 68 and staff, expenditure in relation to the gathering of evidence, administrative costs, translation and interpretation costs, travel costs and daily subsistence allowances.

2. The scope of legal assistance paid by the Court regarding victims shall be determined by the Registrar in consultation with the Chamber, where appropriate.

3. A person receiving legal assistance paid by the Court may apply to the Registrar for additional means which may be granted depending on the nature of the case.

4. Decisions by the Registrar on the scope of legal assistance paid by the Court as defined in this Regulation may be reviewed by the relevant Chamber on application by the person receiving legal assistance.

Regulation 84

Determination of means

1. Where a person applies for legal assistance to be paid by the Court, the Registrar shall determine the applicant's means and whether he or she shall be provided with full or partial payment of legal assistance.

2. The means of the applicant shall include means of all kinds in respect of which the applicant has direct or indirect enjoyment or power freely to dispose, including, but not limited to, direct income, bank accounts, real or personal property, pensions, stocks, bonds or other assets held, but excluding any family or social benefits to which he or she may be entitled. In assessing such means, account shall also be taken of any transfers of property by the applicant which the Registrar considers relevant, and of the apparent lifestyle of the applicant. The Registrar shall allow for expenses claimed by the applicant provided they are reasonable and necessary.

Regulation 85

Decisions on payment of legal assistance

1. In accordance with the procedure set out in the Regulations of the Registry, the Registrar shall decide within one month of the submission of an application or, within one month of expiry of a time limit set in accordance with the Regulations of the Registry, whether legal assistance should be paid by the Court. The decision shall be notified to the applicant together with the reasons for the decision and instructions on how to apply for review. The Registrar may, in appropriate circumstances, make a provisional decision to grant payment of legal assistance.

2. The Registrar shall reconsider his or her decision on payment of legal assistance if the financial situation of the person receiving such legal assistance is found to be different than indicated in the application, or if the financial situation of the person has changed since the application was submitted. Any revised decision shall be notified to the person together with the reasons for the decision and instructions on how to apply for review.

3. Persons as referred to in sub-regulations 1 and 2 may seek review of the decisions described in those provisions by the Presidency within 15 days of notification of the relevant decision. The decision of the Presidency shall be final.

4. Subject to Rule 21, sub-rule 5, where legal assistance has been paid by the Court and it is subsequently established that the information provided to the Registrar on the applicant's means was inaccurate, the Registrar may seek an order from the Presidency for recovery of the funds paid from the person who received legal assistance paid by the Court. The Registrar may seek the assistance of the relevant States Parties to enforce that order.

Regulation 135 of the Regulations of the Registry

Disputes relating to fees

1. The Registrar shall take a decision on any dispute concerning the calculation and payment of fees or the reimbursement of expenses at the earliest possible juncture and notify counsel accordingly.
2. Within 15 calendar days of notification, counsel may request the Chamber to review any decision taken under sub-regulation I.

III. Analysis and Conclusions

27. By its 23 September 2010 Decision, the Chamber clearly remitted the defence Application for adjustment of fees to the Registrar in order for the Registry to

make its decision on the matter as the competent body pursuant to Regulation 135 of the Regulations of the Registry.⁴⁴ In so doing, the Chamber also took the opportunity to remind the Registrar that the expenditure of the advancement of fees as ordered by the Chamber in its 20 October and 4 November 2009 Decisions, should, as a matter of course, have been monitored and while this had not been expressly stipulated by the Chamber in its 20 October or 4 November 2009 Decisions, it was nonetheless implied given the Registrar's own duties to account for monies paid by the Court pursuant to the Financial Regulations and Rules, as set out in the Chamber's 23 September 2010 Decision at paragraph 18.

28. It follows that the defence has misinterpreted the Chamber's 23 September 2010 Decision since the whole purpose of that decision was to remit the defence Application to the Registrar for her to decide on the issue of adjustment of fees, as opposed to the Chamber instructing the Registrar to align the amount of fees advanced with the legal assistance scheme of the Court.

29. In making her Decision on the defence Application for adjustment of fees, the Registrar has quite properly examined both the terms of the Chamber's 20 October and 4 November 2009 Decisions, as well as the intervening period in which fees have been advanced to the defence, as the Chamber's 20 October 2009 Decision makes it clear that the intention was always for the Registrar to recoup fees advanced to the defence, since he is non-indigent and is a man of likely considerable means.⁴⁵

30. However, in considering the issue of adjustment of fees, the Registrar seems to have made a decision on the continuation of advancing fees to the defence rather than on whether an increased amount is appropriate. The decision as

⁴⁴ ICC-01/05-01/08-897-Conf, paragraphs 23 and 27.

⁴⁵ ICC-01/05-01/08-567-Red, paragraph 110.

regards the advancement of fees has already been made by the Chamber in its 20 October and 4 November 2009 Decisions and can therefore only be revoked by the Chamber itself if new circumstances so require. As no appeal has been lodged against these judicial decisions within the requisite deadline, it is not appropriate for another organ of the Court, *a fortiori* the Registrar who is not a party, to usurp the Chamber's function in this regard or unilaterally to decide not to continue to comply with an existing order or instruction of the Chamber.

31. The Chamber's objectives remain the same as stipulated in its 20 October and 4 November 2009 Decisions, namely to enable this case to proceed in a timely and fair manner⁴⁶ pursuant to Articles 64(2) and 67 of the Statute, as well as to secure pre-conditions in the expectation that any monies advanced to the accused will be reimbursed to the Court.⁴⁷ In this regard, it would appear that little, if anything, has been done by the defence to meet the pre-conditions clearly articulated in paragraph 111 of the Chamber's 20 October 2009 Decision as well as in the Chamber's 4 November 2009 Decision.

32. In reviewing the Registrar's Decision, as requested by the defence in its Application for Review, it is appropriate to ensure that the basis of the Chamber's original Decisions for advancing fees to the defence is not frustrated. The Chamber therefore considers that the Registrar's proposals in paragraph 51 of the Registrar's Decision are in part appropriate and in keeping with the Chamber's 20 October and 4 November 2009 Decisions to the extent that these proposals do not circumvent the authority of the Chamber to decide on the continuation of the advancement of fees to the defence and if and when that should be discontinued.

⁴⁶ ICC-01/05-01/08-567-Red, paragraph 5.

⁴⁷ ICC-01/05-01/08-567-Red, paragraph 110.

33. The Chamber can find no prejudice to the defence in complying with the Registrar's proposals since if, as the defence submits, it is not in a position to reimburse the Registry for the fees so far advanced due to the accused's assets still being frozen [REDACTED], the Registrar will continue to advance fees to the defence at three monthly renewable intervals. The Chamber modifies the Registrar's proposals as regards the timeframe below in order to reduce disruptions to the trial process and to allow time for requests for cooperation and other financial investigations to come to fruition. In this regard, it is not for the Registrar to decide whether the steps taken during this period by the defence for the release of funds are satisfactory or not and nor is it for the Registrar to decide when advancement of fees should stop all together since the advancement of fees is being made upon the Trial Chamber's binding instruction and is therefore for the Trial Chamber to modify.
34. As regards the amount to be advanced to the defence, which is the issue to be reviewed, while the Registry did not draw the Chamber's attention to the discrepancy in the figure calculated of 30, 150 Euros being for proceedings before the pre-trial chamber, neither did the defence complain about the amount, either before the Chamber rendered its 20 October and 4 November 2009 Decisions or afterwards by appealing the Decisions.
35. The imminence of the commencement of the trial cannot realistically be considered as a "material change in circumstances" as envisaged by the Chamber in its 20 October 2009 Decision; however, having now been requested to review the issue, it was always the Chamber's intention that the defence should receive an advancement of fees equivalent to the amount to which it would have been entitled under the Court's legal assistance scheme, in order that the accused was not denied the opportunity to properly prepare for trial, pursuant to the accused's statutory entitlement under Article 67 of the Statute. The Chamber was only made aware of the discrepancy on 11

August 2010 by the defence's Application for adjustment of fees. The Chamber also notes that the defence only requests that the increase commences from September 2010.⁴⁸ The Chamber therefore considers that fees should only be advanced to the defence in the sum of 42, 701 Euros as from September 2010 since the defence did not lodge any appeal to contest the original amount awarded in the Chamber's 20 October and 4 November 2010 Decisions. The defence is nonetheless entitled to funding in the amount ordinarily awarded under the legal assistance scheme of the Court.

36. As far as the amount of remuneration paid to members of the defence team is concerned, this is not a matter for the Chamber to determine; however, as instructed in the Chamber's 23 September 2010 Decision, the defence is ordered to comply with the Registry in accounting for the advancement of fees received, retrospectively to March 2009, pursuant to the legal assistance scheme, in order that the Registrar can monitor the defence's expenditure of the monies advanced and fulfil her responsibilities to the Assembly of States Parties.

37. Regarding the defence request for monies for investigation, as raised in its Application, according to the Registrar, the defence still has a total of [REDACTED] at its disposal.⁴⁹ Until such time as the defence produces receipts to show that this money has been spent and what it has been spent on, the Chamber has no reason to doubt the Registrar's calculations and also notes that the defence does not contest these in its Application for Review. The Chamber therefore declines to award further funding for investigations at this stage.

⁴⁸ ICC-01/05-01/08-852-Red, paragraphs 10 and 13.

⁴⁹ [REDACTED] and [REDACTED].

38. As mentioned above, the Chamber partially supports the Registrar's proposals in her Decision, as regards advancing fees to the defence and attempting to recoup the same. However, through reports from the Registry and the defence's response thereto, the Chamber will decide whether the defence has taken satisfactory steps to attempt to repay the fees advanced and will base any future decision on continuation of advancement of fees to the defence on compliance with these conditions.

39. For the above reasons, the Chamber hereby orders:

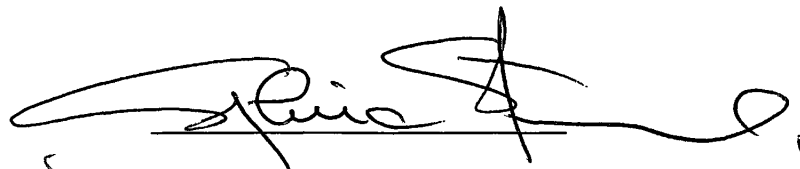
- (i) The Registrar to continue to advance fees to the defence for Mr Bemba in the increased sum of 42, 701 Euros a month, retrospectively from September 2010, and otherwise in accordance with the Chamber's Decisions of 20 October and 4 November 2009 for a renewable period of six months, subject to the conditions set out in the sub-paragraphs below;
- (ii) The defence to comply with condition (i) of the 20 October 2009 Decision as set out in paragraph 12 of the present Decision, by 16.00 on 13 December 2010;
- (iii) The Registry to inform the Chamber of Mr Bemba's compliance with the order referred to in sub-paragraph (ii) above;
- (iv) The defence to cooperate with the Registry in accounting for the advancement of fees received, retrospectively to March 2009, in accordance with the requirements of the legal assistance scheme, by providing this information by 13 December 2010 and on a monthly basis thereafter;

- (v) The defence to report to the Registry on a monthly basis as to the steps taken to free up all or part of the funds needed to finance the defence team and reimburse the amounts previously advanced by the Registry, commencing on 13 December 2010;
- (vi) The Registry to assist the defence and Mr Bemba in determining and implementing the most appropriate measures for quickly accessing the funds needed to finance the defence team and reimbursing the amounts advanced by the Registry including assisting the defence in issuing potentially necessary requests for cooperation to the national authorities;
- (vii) The Registrar to report to the Chamber every two months as to the steps taken by the Registry to recover funds advanced to the defence for Mr Bemba and is encouraged to further her financial investigations by, *inter alia*, requesting cooperation of the States concerned in a similar manner to that ordered by the Trial Chamber in October and December 2009;⁵⁰
- (viii) That upon the release of amounts paid by Mr Bemba, priority will be allocated to repayment of sums already advanced by the Registry and, once this refund is completed, the amounts released will substitute all or part of the advanced funds;
- (ix) That the advance of funds by the Court will finally end when Mr Bemba is able to finance his own defence, or by decision of the Chamber.

⁵⁰ See ICC-01/05-01/08-634-US-Exp and Transcript of hearing on 29 October 2009, ICC-01/05-01/08-T-16 CONF-EXP-ENG-ET.

40. If, after the initial period of six months referred to in (i), the defence is still unable to free up all or part of the funds needed to finance the defence team and the reimbursement of amounts previously advanced by the Registry, the Chamber will decide whether the steps taken during this period by the defence for the release of funds were satisfactory or not. This review will continue every six months until the termination of advance funding.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 7 December 2010

At The Hague, The Netherlands