



**Cour
Pénale
Internationale**

**International
Criminal
Court**

Financial investigations and recovery of assets



This publication was produced with the financial support of the European Union. Its contents are the sole responsibility of the International Criminal Court (ICC) and do not necessarily reflect the views of the European Union.

03

Introduction

04

Identification, tracing and freezing, or seizure of assets

10

Best practices

14

Areas for improvement

18

Conclusion

20

Important ICC case law on financial investigations and recovery of assets

Introduction

While the International Criminal Court (“ICC” or “Court”) does not have jurisdiction over financial crimes as such (e.g. money-laundering or corruption), clear links exist between the mandate of the Court and the efforts of the international community to combat these crimes. For example, a number of crimes within the jurisdiction of the Court may be financed, and thus enabled, by the proceeds and assets emerging from a range of other crimes. As a result, the tracing, freezing, seizure and recovery of stolen assets or assets otherwise linked to the commission of international crimes or persons accused of them are the object of increasing attention not only by the Court but also the international community at large.

The Court seeks to achieve four objectives when conducting financial investigations (in chronological order):

Firstly, financial investigations may provide significant and valuable information pertaining to cases before the Court. This information can serve as evidence and potentially contribute to demonstrating the elements of a crime or determining an individual’s criminal responsibility.

Secondly, financial investigations contribute to the responsible management of the funds provided to the Court by States Parties as they ensure that there is no undue payment of legal aid to the defence teams.

Thirdly, it is crucial for accountability and to ensure that ‘crime does not pay’, in the event that the person is sentenced to the payment of fines and/ or the forfeiture of proceeds, property and assets derived directly or indirectly from the crime.

Finally, pursuant to the Rome Statute (“Statute”), the Court may order reparations to victims, for which the convicted person is personally liable. Securing an accused’s assets may be crucial for a meaningful award of reparations to victims.

Accordingly, the Court – together with many other organizations that have spent the past decade enhancing their efforts to bolster international cooperation on financial investigations – sees stronger financial investigations and asset recovery as vital to the effective execution of its mandate and the delivery of justice.

01

**Identification, tracing
and freezing, or seizure
of assets**

The Court, through its different organs and in the framework of their respective mandates, conducts financial investigations involving the identification, tracing and freezing or seizure of assets (“asset recovery”).

Office of the Prosecutor

The Office of the Prosecutor (“OTP”) plays a decisive role in obtaining financial information on suspects from a very early stage in the proceedings. The OTP conducts financial investigations and analyses to identify financial flows as part of its investigative activities in accordance with article 54 of the Statute. This is crucial, as such investigations and analyses can contribute to demonstrating:

- the existence of the crimes themselves;
- the linkage elements of the crimes; and/or
- the criminal responsibility and relevant modes of liability of individuals for crimes under the jurisdiction of the Court.

Additionally, the OTP conducts financial investigations to identify assets and transmit relevant information to the Chamber to form

the basis for possible future forfeiture orders and reparations awards to victims. In this context, the OTP may make requests to States pursuant to article 93(1)(k) of the Statute for the purpose of identifying, tracing, freezing and seizing assets.

Chambers

Once a warrant of arrest or a summons to appear has been issued, the relevant Chamber may issue requests for the “identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes” pursuant to articles 57(3)(e) and 93(1)(k) of the Statute as protective measures for the purpose of forfeiture and for the ultimate benefit of victims.

The Registry

The Registry’s mandate in relation to assets recovery is twofold:

Financial investigations are conducted by the Registry¹ *proprio motu* to assess the indigence of suspects/accused persons who claim legal aid at the Court’s expense.² The Registry has a responsibility to manage the public funds entrusted to it. This includes a responsibility to conduct financial investigations and, in certain cases, to recover legal aid debts from assets identified as belonging to the suspect/

1 Regulation 132 (2) of the Regulations of The Registry

2 Pursuant to Article 67(1)(d) of the Statute, “(the accused shall be entitled to) conduct the defence in person or 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”. See also Rule 21(5) of the Rules of Procedure and Evidence, Regulation 85 of the Regulations of the Court and Regulations 130(2) and 132(2) of the Regulations of the Registry.

accused. Reimbursement may be requested by the Chamber via the Registry for funds “advanced” to a non-indigent person or for funds wrongly granted based on false declarations by the beneficiary concerning his/her resources when applying for legal aid³. In both cases, the recovered funds may be redistributed among the States Parties to offset their contribution to the Court’s budget.⁴

Pursuant to a Chamber’s order and in accordance with rule 176(2) of the Rules of Procedure and Evidence (“RPE”), the Registry makes all possible efforts to obtain the tracing, identification and seizure of the assets of persons put on trial in order to secure available assets to satisfy any fines or orders for forfeiture or reparations that the Chamber may render for the ultimate benefit of victims.

The Registry therefore drafts all requests for assistance to States and intergovernmental organizations involving assets recovery deriving from judicial decisions, or concerning the determination of indigence. The Registry also ensures follow-up as appropriate and prepares reports to Chambers –in consultation with the OTP if appropriate – on the execution of requests.

Presidency

The Presidency plays a role at the enforcement stage of the proceedings. Once there is a decision (if any) regarding fines and forfeitures or reparations, the organ in charge of enforcing that decision, with the assistance of the Registry, will be the Presidency. It will decide on all matters related to the disposition or allocation of property or assets realized

³ Rule 21(5) of the Rules of Procedure and Evidence

⁴ Assembly of States Parties, ICC-ASP/13/20, Part III(A)(5).

through enforcement of an order of the Court (rule 221 of the RPE).

Trust Fund for Victims (“Trust Fund”)

Created by article 79 of the Statute and established in 2002 by the Assembly of States Parties (“the Assembly”), the Trust Fund has a twofold mandate: 1) it is the implementing body for Court-ordered reparations and 2) it provides physical, psychological and material assistance to victims and their families in situations under the Court’s jurisdiction.

Under mandate (1), the Trust Fund’s use of a convicted person’s resources for reparations awards⁵ is determined by the stipulations and instructions set out in the Court’s order for reparations. Where the convicted person’s resources have not yet been seized by the Court or are insufficient to pay for the awards for reparations ordered against him or her, the Trust Fund’s Board of Directors may complement those resources with its own resources. These resources may come from voluntary contributions, money and property collected through fines or forfeiture,⁶ or resources allocated by the Assembly. This decision does not displace the convicted person’s liability.⁷

In fulfilment of their different mandates and with due regard for the OTP’s independence and the Registry’s neutrality, the organs of the Court interact in various ways aimed at ensuring the most efficient flow of

⁵ Article 75 (2) of the Statute and rule 98 of the RPE.

⁶ Article 79 (2) of the Statute.

⁷ Where a convicted person has insufficient resources, voluntary contributions from a State may be earmarked for a reparations award. See regulation 27 of the TFV Regulations as amended by resolution ICC-ASP/6/Res.3.

information. This inter-organ coordination takes place both at the level of judicial cooperation – via the exchange of information – and within the framework of external relations, where contacts are discussed and shared to avoid overlapping, inefficiencies and duplication of effort. Registry and OTP staff coordinate regularly and conduct meetings and missions together where appropriate.

In order to ensure that the aforementioned exchanges take place pursuant to the rules and regulations of the Court, and to ensure maximum efficiency while respecting the rights and responsibilities of all parties and participants, a “Protocol regulating information sharing between the Office of the Prosecutor and the Registry within the framework of financial investigations” has been put in place.

Finally, it is important to highlight that the entire process of asset recovery takes due consideration of the rights of the defence, including the presumption of innocence and the rights of *bona fide* third parties.



The entire process of asset recovery takes due consideration of the rights of the defence, including the presumption of innocence and the rights of *bona fide* third parties.

Financial investigations and recovery of assets



Registry

Presidency

Trust Fund for
Victims

Follow-up on
the Chamber's
requests for
assistance

Report to the
Chamber

Investigation
on indigence

Enforcement
of fines and
forfeitures

Enforcement
of reparation
orders

Reparation
plans



02

Best Practices

What is the role of States?

Pursuant to article 86 of the Statute, States Parties are legally required to cooperate fully with the Court including, as necessary, through adjustments to their domestic legal and institutional frameworks as required under article 88 of the Statute.

As a rule, timely and efficient State cooperation is crucial for the Court to be able to successfully fulfil its mandate. Indeed, without the cooperation of States, the Court would not be able to secure any assets that could potentially satisfy an order for fines and/or forfeitures and/or for reparations to victims. It is therefore in the interests of the States Parties and the Court to work together.

How does the Court engage with States?

The Court engages with States in numerous ways, such as through OTP's financial investigations and Registry's requests for assistance. In all such exchanges, a good understanding of the mandate of the respective organ, the legal framework and the legal implications is important.

With a view to enhancing this understanding, the Court has undertaken awareness raising efforts regarding its mandate and the obligations of States Parties, particularly in the area of financial investigations, through various seminars and cooperation training initiatives over the years.

With the help of States, the Court seeks to obtain an overview of domestic systems to better understand implementation challenges and produce better tailored requests for cooperation.

The Court also establishes contacts with domestic authorities and consults with them informally before sending a formal request for assistance. This enables the Registry and the OTP to produce sound requests containing, to the greatest extent possible, all relevant information to enable the receiving authorities to implement the requests. In this regard, the Court takes all possible measures to ensure appropriate and regular contact with the necessary interlocutors, for instance, by way of video-conferences or engagement with diplomatic representations in The Hague.

Further developing in-house expertise, within both the OTP and the Registry, in the field of financial investigations will contribute to enhancing the capacities of the Court to advance meaningful financial investigations. By the same token, access to international databases and information systems, through signature of appropriate agreements would also be of great value.

Finally, the Court recognizes the importance of building and strengthening strategic partnerships.



In summary, the Court can make financial investigations more effective by:

Improving communication channels and establishing channels for operational coordination;

Consulting with national experts;

Maintaining regular bilateral contacts between the Court and States Parties;

Using and expanding existing networks;

Signing agreements for access to relevant databases and information systems.

What can States do to increase cooperation with the Court?

First, pursuant to article 88 of the Statute, States Parties can review and adjust domestic cooperation laws, procedures and policies, if necessary, to facilitate the implementation of cooperation requests, including in the area of financial investigations. States Parties should ensure that they are able to “fully cooperate” in this area.

A good example has been set by Belgium, which recently passed legislation (article 26, paragraph §3 of the Belgium Cooperation Act 2004) enabling cooperation on legal aid recovery.

Second, States Parties can raise awareness among relevant domestic authorities and officials on the difference between the mandate of the Court in relation to financial investigations and asset recovery and the mandate of domestic courts in national jurisdictions.

Third, States Parties can instruct domestic authorities and officials to be proactive and constructive in cooperating with the Court on financial investigations. In particular, if domestic authorities and officials are available for informal contact with the Court they can give concrete and meaningful suggestions to help prepare formal requests for cooperation effectively and efficiently. In turn, those requests will be easier to execute. Ideally, States Parties would designate contact points specifically for the purpose of cooperating with the Court’s financial investigations.

Lastly, States Parties can open domestic investigations into possible financial crimes based on information received through cooperation requests from the Court, enabling domestic proceedings to take place in line with the principle of complementarity.

In summary, States can increase the effectiveness of the Court’s financial investigations by:

- Reviewing and adjusting domestic legislation;

- Raising awareness;

- Encouraging domestic authorities and officials to be proactive;

- Opening domestic investigations;

- Offering training opportunities and loans of personnel to the Court.

03

Areas for improvement

For more information, please read the “Report on cooperation challenges faced by the Court with respect to financial investigations. Forward-looking conclusions”, drafted following the seminar that took place on 26 and 27 October 2015 at the seat of the Court.

Without its own police force or power to conduct financial investigations in other jurisdictions, the Court is dependent on the cooperation of States.

Below are examples of key challenges that demonstrate where State cooperation is crucial:

Locating assets

Suspects/accused persons before the Court often come from regions affected by armed conflict, where the lack of a robust legal and financial system is not unusual. This makes it very easy for the suspect/accused to hide any assets he or she may have.

Money can also be moved worldwide via bank transfers or other financial mechanisms in a matter of seconds. New advances in banking technology, the globalization of international financial systems and further developments in communications have made it increasingly easy for suspects/accused persons to transfer, hide and move funds. For instance, offshore banking centres are ideal for individuals who wish to hide funds.

Additionally, the location of some assets may force the Court into a dilemma in situations where it wishes to transmit a cooperation request to a State that it thinks may be in possession of relevant financial information. On the one hand, before its request, the Court needs some primary information to enable it to send a specific, targeted request and avoid embarking on an overbroad inquiry or colloquially termed “fishing expedition”. On the other hand, this primary information may only be obtainable via domestic investigations by the requested State itself.

While important efforts are being conducted by the Prosecutor and the Registry regarding asset recovery, the Court faces at least two sets of challenges in this regard:

First, many challenges in this domain are linked to the inherent complexity of financial investigations as such.

For instance, the increasing number of sophisticated tools which any individual may use to disguise ownership of assets makes tracking financial flows very difficult. Banking secrecy legislation, shell companies and straw men are but a few examples of such tools. Also, financial investigations are almost invariably cross-border in nature and thus require a high degree of international cooperation.

Second, the Court is exposed to further difficulties by dint of its own particular nature. Typically, all information necessary to conduct a financial investigation is located in a foreign jurisdiction.

As the Court does not have its own police force or power to conduct financial investigations in other jurisdictions, it is practically fully dependent on the cooperation of States.

Linkage to the person

Even when assets have been located, linking them to suspects/accused persons remains a challenge. This difficulty is compounded if the assets are located in a country where banking laws are specifically or effectively designed to maintain secrecy and protect the anonymity of account holders, or where information on the beneficial ownership of trusts and companies cannot be obtained. Offshore financial centres often enable individuals to create complex networks of shell companies where there is no obligation to reveal the identity of the beneficial owner.

Devaluation of the assets

Because assets are frozen during the entirety of ICC proceedings, their value could significantly decrease by the time they can be sold. Therefore, consultation with States at the very early stage is crucial to avoid the devaluation of assets frozen on behalf of the Court.

Implementing national legislation

Many States still lack the appropriate legislation and procedures to execute cooperation requests from the Court, particularly in relation to financial investigations. As already stated above, and pursuant to article 88 of the Statute, States must ensure that they have the necessary



States must ensure that they have the necessary legal tools to execute the Court's requests for cooperation.

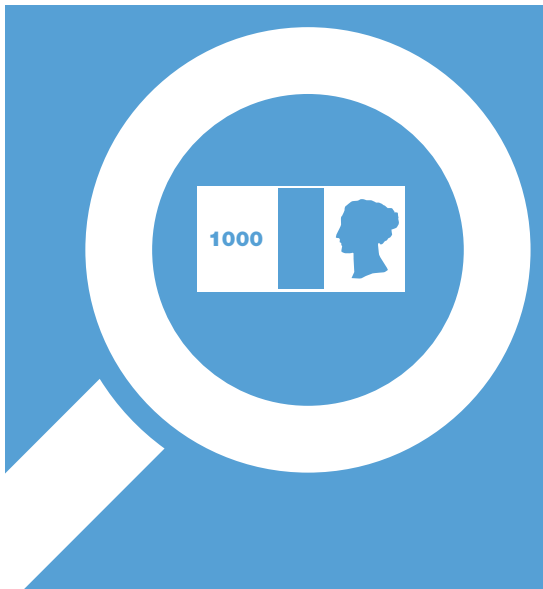
legal tools to execute the Court's requests for cooperation.

While know-how and experience is increasing in the area of asset tracing and recovery for reparations purposes, this is less so when it comes to implementing cooperation requests in relation to legal aid, or when requests relate to Article 70 offences. States may consider adjusting their domestic legislation in this area (see the example of Belgium above).

Additionally, when relevant domestic legislation is in place and allows for the execution of the request, the authorization given tends to be strictly limited to the specific request. This means that even if reasons exist to believe that investigations could go further (for instance, with the discovery of assets not sought under the initial request), the executing authority will be limited in its investigative powers and will (in the best case) have to revert to the Court so that the latter can transmit a follow-up request. This is certainly a lengthy process.

Inter-State coordination

The main objective of a financial investigation is to determine the estate of a suspect/accused. When assets are located in different jurisdictions, international cooperation is crucial in order for the financial investigator to have a full picture. At the domestic level, this is done via mutual legal assistance. However, when the case emanates from the Court, an extra layer of difficulty presents itself. In the absence of domestic investigations against the suspect/accused, a State will not have the legal basis to send a request for mutual legal assistance to another State. This means that most States that receive a request from the Court will only have a partial view of the estate of the suspect/accused. The Court may have a full picture, but its resources are insufficient to analyse all the information it receives. A closer cooperation between the States whose assistance has been requested by the Court could be the way forward.



Most States that receive a request from the Court will only have a partial view of the estate of the suspect/accused.

Conclusion

Not only are financial investigations and asset recovery crucial to the investigation and effective prosecution of crimes under ICC jurisdiction; financial investigations also play a vital role in making any fines, forfeitures or reparation orders for victims meaningful as well as ensuring the proper management of legal aid.

In order to ensure that financial investigations and asset recovery lead to meaningful results, State cooperation is paramount, as all of the relevant information lies mostly within domestic jurisdictions.

The challenges encountered by both States and the Court are numerous (locating assets, linking assets to the suspect/accused, implementing legislation and inter-State coordination). However, adopting the necessary implementing legislation and procedural mechanisms under article 88 has the potential to contribute significantly to achieving the desired results.

A shift of mentality is needed so that it becomes apparent that the same legal tools used by States to combat money laundering, organised crime and the financing of terrorism can be used to assist the Court in its financial investigations and asset recovery efforts.

The Court and States Parties can make progress by establishing and improving communication channels and channels for operational coordination; organizing regular bilateral contacts between the Court and States Parties (including with national experts); using and expanding existing networks; and signing agreements for access to relevant databases and information systems. States Parties can also contribute by raising awareness, fostering proactivity among domestic authorities and officials, and conducting domestic investigations when necessary.

A coordinated approach, strategic thinking and consistent, high-quality cooperation in the area of financial investigations will contribute to the Court's ability to effectively fulfil its mandate, in particular for the ultimate benefit of the victims.

IMPORTANT ICC CASE LAW ON FINANCIAL INVESTIGATIONS AND RECOVERY OF ASSETS

The following extracts are not exhaustive and come from decisions which are public.



No nexus is required between the assets sought and the crimes for which the person is summoned, charged or convicted



The jurisprudence below focuses mainly on how the parties and participants have litigated the link between the assets sought and the crimes for which the person is summoned, charged or convicted, a common requirement of financial investigations in domestic jurisdictions. As the examples below demonstrate, the different Chambers seized of the question have ruled that such a link is not necessary in order to comply with a cooperation request from the Court.

1.1 Kenyatta

Trial Chamber V(b) “Decision on the implementation of the request to freeze assets”, *The Prosecutor v. Uhuru Muigai Kenyatta*, 8 July 2014 (ICC-01/09-02/11-931)

“The Chamber notes the submission of the Kenyan Government that the implementation of a cooperation request under Article 93(1) (k) of the Statute relating to identifying, tracing and/or freezing assets or property of an accused person requires an express finding that such assets or property were instrumentalities of a crime or that they came into the possession of the person upon execution of the crime.” (para. 11)

“The Majority considers that the statutory framework does not require any such nexus

to be established when ordering protective measures under Article 57(3)(e). In the Majority’s view, the word ‘forfeiture’, which may be defined as broadly as the ‘divestiture of property without compensation’, as contained in Article 57(3)(e) of the Statute, also encompasses an award for reparations under the Statute. In particular, the Majority does not consider that the use of the word ‘forfeiture’ limits the Pre-Trial Chamber’s authority to solely ordering protective measures for the purpose of Article 77(2)(b) of the Statute. It is apparent from, for example, Rule 99 of the Rules, entitled ‘Cooperation and protective measures for the purpose of



forfeiture under articles 57[(3)(e)], and 75[(4)]', that, when used elsewhere in the statutory framework, the term 'forfeiture' may carry a broader meaning which encompasses an award for reparations. In addition, Rule 99(1) of the Rules provide, inter alia, that a legal representative of victims who has made a request for reparations may request a Pre-Trial Chamber or Trial Chamber to seek relevant measures pursuant to Articles 57(3) (e) or 75(4) of the Statute, as applicable. As noted by Pre-Trial Chamber I, 'in light of rule 99 of the Rules, the contextual interpretation of article 57(3)(e) of the Statute makes clear that the Chamber may, pursuant to article

57(3)(e) of the Statute, seek the cooperation of States Parties to take protective measures for the purpose of securing the enforcement of a future reparation award'." (para. 12)

Additionally, the Chamber recalled "[...] the obligation, pursuant to Article 88 of the Statute, to ensure there are procedures for cooperation available under national law. These procedures should facilitate timely compliance with requests for assistance. The Chamber finds it unnecessary to consider whether or not the International Crimes Act and other Kenyan domestic legislation provides a sufficient basis for executing cooperation requests under Part 9 of the Statute. Any purported deficiency in domestic legal procedures (or interpretation thereof), cannot be raised as a shield to protect a State Party from its obligation to cooperate with the Court, or to undermine any application for non-compliance under Article 87(7) of the Statute that may result." (para. 28)

Judge Henderson, in his dissenting opinion, considered that: "[t]he term 'forfeiture', referred to in Article 57(3)(e), is only provided for in the Statute under Article 77(2)(b) ('Applicable Penalties'), which refers to '[a] forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of *bona fide* third parties'. These provisions, when interpreted in accordance with their ordinary meaning and in light of their object and purpose, in my view, only empower the Pre-Trial Chamber to request protective measures from the States for the purposes of eventual forfeiture in respect of proceeds, property and assets derived directly or indirectly from the crimes for which the accused was charged."

1.2 Bemba et al.

On 17 November 2015, by way of a decision issued in *Bemba et al.*, the Single Judge determined that:

“Article 93(1)(k) of the Statute does not establish the requirement that ‘assets’ be derived from or otherwise be linked to alleged crimes or offences within the jurisdiction of the Court. The words ‘of crimes’ in Article 93(1)(k) of the Statute refers to ‘instrumentalities’ and not to ‘property and assets’. As a result, it is irrelevant that the sum of [REDACTED] was paid as remuneration of Mr Kilolo’s licit activities as counsel for Mr Bemba.”⁸

1.3 Redacted case

Appeals Chamber “Judgment on the appeal of the Prosecutor against the decision of [REDACTED]”, 15 February 2016 (ICC-ACRed-01/16)

“The issue on appeal is ‘[w]hether assets subject to a Chamber’s order and request for cooperation under articles 57(3)(e) and 93(1) (k) of the Statute must be derived from or otherwise linked to alleged crimes within the jurisdiction of the Court.’” (para. 35)

“[...] the Appeals Chamber notes the difference in wording between articles 93 (1) (k) and 77 (2) (b) of the Statute. The ‘property and assets’ which are the subject of the penalty of forfeiture under article 77 (2) (b) of the Statute, must be ‘derived directly or indirectly from [a] crime [referred to in article 5 of the Statute of which the person has been convicted]’. By contrast, a requirement that ‘property and assets’ be derived from a crime

⁸ Trial Chamber VII, “Decision on the ‘Requête de la défense aux fins de levée du gel des avoirs de Monsieur Aimé Kilolo Musamba’”, 17 November 2017, ICC-01/05-01/13-1485-Red, para. 17.

is not clearly expressed in article 93 (1) (k) of the Statute.” (para.42)

“The Appeals Chamber further notes that the punctuation of the phrase in article 93 (1) (k) of the Statute differs from that of article 77 (2) (b) of the Statute. While article 77 (2) (b) of the Statute separates with commas all types of property which must be derived from a crime and uses the conjunction ‘and’ only before the last type of such property, article 93 (1) (k) of the Statute uses the conjunction ‘and’ both between the words ‘property’ and ‘assets’, and before the words ‘instrumentalities of crimes’. In addition, the Appeals Chamber considers that the words ‘of crimes’ at the end of the phrase do not modify the terms ‘property’ and ‘assets’. Indeed, one cannot speak of ‘property of crimes’ or ‘assets of crimes’. Based on the foregoing, the Appeals Chamber finds that the words ‘of crimes’ in article 93 (1) (k) of the Statute thus refer to ‘instrumentalities’ and not to ‘property and assets’.” (para. 43)

“[...] the Appeals Chamber considers that rule 99 of the Rules of Procedure and Evidence



clarifies that the purpose of the protective measures set out in article 57 (3) (e) of the Statute is not only the penalty of forfeiture under article 77 (2) (b) of the Statute; such protective measures may also be taken in relation to a potential reparations order.” (para.46)

“The Appeals Chamber also notes that protective measures under article 57 (3) (e) of the Statute may be requested ‘[w]here a warrant of arrest or a summons has been issued under article 58’. At that stage of proceedings, it may be difficult to determine which property and assets were ‘derived directly or indirectly from [the] crime’ for the purpose of giving effect to a future penalty of forfeiture that may be imposed. Accordingly, the Appeals Chamber considers that an interpretation of articles 57 (3) (e) and 93 (1) (k) of the Statute whereby the property and assets need not be derived from crime is consistent with the limitations inherent at this stage of the proceedings.” (para. 47)

“Furthermore, having regard to (i) the above-mentioned difficulty in determining a link with crime at early stages of the proceedings, and (ii) the fact that requests for cooperation concerning property and assets are directed to the authorities of States Parties that may have a limited knowledge of the charges against the suspect, the Appeals Chamber is of the view that, had the drafters intended that ‘property and assets’ under article 93 (1) (k) of the Statute be derived from crime, a procedure before the Court would have been put in place for the specific purpose of determining the link between the property and assets and the crimes alleged. The absence of a specific procedure for determining the link between property and assets which may be the subject of the protective measures and the crimes charged in response to potential enquiries by States Parties is notable. The Appeals Chamber considers that this implies that no such link is required.” (para. 48)





Lifting of an order to freeze assets

2.1 Bemba

Pre-trial Chamber III, “Decision on the Second Defence’s Application for Lifting the Seizure of Assets and Request for Cooperation to the Competent Authorities of the Republic of Portugal”, 14 November 2008 (ICC-01/05-01/08-249)

“On 28 October 2008 the Defence filed an application entitled ‘Requête en main levée de saisie’ (the “Second Application”) requesting the partial lifting of the seizure or freezing of a specific amount of money in a Portuguese bank account of Mr Jean-Pierre Bemba.” (para. 8)

“[The Chamber] finds that the Defence did not submit any relevant documentation to justify its request. Moreover, the Chamber is of the view that the Defence failed to demonstrate any change in the financial situation of Mr Jean-Pierre Bemba since 10 October 2008.” (para. 15)

Pre-Trial Chamber III, “Decision on the Defence’s Urgent Application for Lifting the Seizure dated 29 December 2008 and Request



for Cooperation to the Competent Authorities of Portugal”, 31 December 2008 (ICC-01/05-01/08-339-Red)

“[...] the Single Judge partially grants the Defence’s request on an urgent and provisional basis and authorises the competent authorities of the Republic of Portugal to release the amount of €36,260 from account [REDACTED], for the month of January 2009 and on a monthly basis until the issuance of the decision on the confirmation (or not) of the charges.”(para. 10)

“On the other hand, however, the Single Judge is equally mindful of the Chamber’s obligation to ensure that any available assets of Mr Jean-Pierre Bemba be preserved for the sake of any reparation orders which might be made to the benefit of victims at a later stage of the proceedings. The fact that incomplete information seems to have been submitted to the Chamber is source of great concern. The Single Judge strongly reaffirms the Chamber’s duty and power to retain control over any assets and/or financial resources which might be available to Mr Jean-Pierre Bemba.” (para. 11)

2.2 Bemba et al. and the right to appeal a decision on the lifting of an order to freeze assets

Pre-Trial Chamber II, “Decision on Mr Kilolo’s ‘Notice of appeal against the decision of the Single Judge ICC-01/05-01/13-743-Conf-Exp’ dated 10 November 2014 and on the urgent request for the partial lifting of the seizure on Mr Kilolo’s assets dated 24 November 2014”, 1 December 2014 (ICC01/0501/13773)

“CONSIDERING, preliminarily, that Mr Kilolo’s Application fails to specifically

address the requirements set forth under article 82(1)(d) of the Statute, focussing instead on the merits of and on the errors purportedly affecting the 4 November 2014 Decision and that, as such, should be rejected *in limine*; [...]

CONSIDERING, by the same token, that the right to property is listed as a fundamental human right in several international instruments, including article 1 of Protocol 1 to the European Convention on Human Rights, article 21 of the American Convention on Human Rights, article 14 of the African Charter on Human and Peoples’ Rights;

CONSIDERING that, in light of both its provisional nature and the fact that it relates to one of the fundamental rights of an accused, a decision on the seizure of assets can be considered as similar to a decision on the interim release of the accused, which decision can be appealed without the leave of the relevant Chamber pursuant to article 82(1) (b) of the Statute;

CONSIDERING that a direct right to appeal is also enshrined in article 82(4) and rule 150(1) of the Rules against orders for reparations issued under article 75, which orders may also similarly affect the right to property; [...]

CONSIDERING accordingly that, whilst rejecting Mr Kilolo’s Application, the Chamber takes the view that it is desirable that the issue be brought before the Appeals Chamber and, accordingly, sees no obstacle for Mr Kilolo to directly submit his ‘Notice of Appeal’ to the Appeals Chamber, thereby prompting its determination of the matter; [...]



icc-cpi.int



[InternationalCriminalCourt](https://www.facebook.com/InternationalCriminalCourt)



[IntlCrimCourt](https://twitter.com/IntlCrimCourt)



[icc-cpi](https://www.instagram.com/icc-cpi)



[IntlCriminalCourt](https://www.youtube.com/IntlCriminalCourt)

First edition
November 2017
International Criminal Court