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Registrar

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Financial Investigations: Challenges of Asset Recovery

Esteemed States' Representatives,

Excellencies and co-facilitators on cooperation,

Madam Prosecutor,

It is my pleasure to address you today on this important topic of financial investigations and recovery of assets. I would like to thank the co-facilitators for placing this subject on top of our common agenda and for organising the seminar in Paris this last October.

The issue is at the core of the Court's latest judicial developments. The Chambers have issued reparations awards in two cases, namely Katanga and Al Mahdi. Further reparations orders are expected imminently in the Lubanga case on 15 December, and early next year in the Bemba case.

Indeed, on 24 March 2017, in the Katanga case, Trial Chamber II issued an order for reparations in which it decided to grant 250 USD as symbolic individual reparations to 297 victims. It also assessed the extent of the physical, material and psychological harm suffered by the victims at a total monetary value of approximately USD 3,752,620. Of that amount, it held that one million is to be paid by Mr. Katanga, corresponding to his personal liability.

A Chamber was also constituted to deal with reparations in the Bemba case while the verdict and sentence are under appeal. More than 5,600 victims have applied for participation and/or reparations in the latter case.

For the first time in the life of the Court, this year a Trial Chamber also issued fines against convicted persons in the *Bemba et al.* case.

The Rome Statute recognises that protective measures are taken for the ultimate benefit of victims and it is essential that their right to reparations remains at the centre of all discussions concerning the recovery of assets. Participation and reparations for victims are amongst the most innovative features of the Court. The Rome Statute recognises that holding perpetrators to account for the worst crimes would be incomplete without also considering the reparations dimension to the benefit of victimised populations. This includes a robust recovery of assets of convicted persons for the purpose of reparations. We need to ensure that convicted persons cannot benefit from the proceeds of their crimes or escape their responsibility towards victims.

In addition to fulfilling victims' rights to redress, and in my capacity as the Registrar, I cannot ignore the importance of investigations regarding the disposable means of an accused person in order to determine his or her indigence. These investigations, often without equivalent at the domestic level, are important for the Court to ensure the proper

management of the legal aid budget. The Registry currently relies on the assistance of one financial investigator to deal with all financial investigations.

So how can we be successful in this endeavour? The Court has to show that all efforts have been made to identify and recover assets belonging to the accused. States also have a responsibility to ensure that they make all efforts to assist the Court in its investigations and to honour the Court's requests for assistance in that regard.

The topic of recovery of assets is not a new item on the international agenda. It has emerged as a key topic when States have been searching for tools to combat serious transnational organised crime, notably corruption and the financing of terrorism. It has also been used to a certain extent in the context of freezing orders emanating from Sanctions Committees. States therefore have national procedures in place to facilitate cooperation in the field of financial investigations and have developed expertise to face the challenges inherent in the concealing of criminal assets and assets in general. Similarly, the focus put on "politically exposed persons", that is to say individuals who have been entrusted with a prominent function by the Financial Action Task Force, resonates with the profile of persons tried before the Court.

As far as the Registry is concerned, requests for the tracing, identification and freezing of assets are transmitted to States when a warrant of arrest or a summons to appear for Rome Statute crimes is issued. The threshold of gravity is therefore high and without doubt meets the standards generally required amongst States for asset seizure in cases of serious organised crime.

In expert networks and at the national level, there is however not enough understanding of the reality and specific needs of the ICC. One key distinction is that the Court cannot be considered as a State since it has no territory on which it can start its investigations.

To improve understanding, the Registry, in coordination with the other organs of the Court, has developed a booklet on financial investigations and asset recovery that has been distributed to all delegations. The booklet outlines the process followed by the Court, provides examples of good practices and areas that need improvement and lists extracts of key public decisions shaping the case law of the Court.

This booklet is not intended to be a manual for experts but gives a brief overview of the way the Court deals with the identification, tracing and freezing of assets, including the responsibilities of each organ.

I recognise that there has been engagement with States via the co-facilitations on cooperation, expert seminars such as the one organised in 2015 at the seat of the Court, and recently in Paris. These seminars have contributed to not only highlighting the main issues at stake, but also resulted in concrete recommendations such as the ones I am putting

forward in the following. A number of immediate steps could indeed be taken by States to support the work of the Court; let me briefly address them at this occasion:

- States should adopt the necessary legislation or procedures in line with their Rome Statute obligations to be in a position to reply timely and effectively to relevant requests from the Court. It is paramount that the Court has all it needs in terms of support in order to successfully reconstruct the complex asset recovery puzzle of any given ICC suspect and/or accused;
- States can streamline ICC specific needs internally so that the prosecution of war crimes and crimes against humanity triggers the same reflexes in terms of financial intelligence and investigations as the prosecution of financial crimes or transnational organised crimes. It is hoped that the booklet I was referring to earlier will help the national experts in understanding better these needs.;
- States can open domestic investigations into possible financial crimes on the basis of information received by the Court so that they can use the full arsenal offered by their national law;
- States can appoint focal points on freezing of assets to follow-up on exchanges with the ICC, as appropriate;
- Within the judicial context, it is important that States reply to the Chamber's requests and ask for clarification where required, in a speedy fashion. States can thus contribute in shaping the Court's case-law on this complex matter;
- Periodic bilateral meetings can be organised so that the staff of the Court understand the specificity of relevant national systems and identify the best procedures to follow together with the requested State.

On the side of the Court, we have also tried to look into innovative solutions within our existing resources and I would like to give a number of examples of what we have done to date:

- The Registry has concluded an agreement with a private law firm with expertise on the recovery of assets that is willing to work *pro bono* for the Court;
- We have also obtained the authorisation of the Chambers to share information provided individually by several States amongst these States with a view to obtaining a more general picture of the estate of the person. This way, States can combine their analytical efforts to obtain more targeted and comprehensive information to the benefit of the Court;
- As a Court, we also continue to participate in diverse networks to reinforce contacts at the expert level and emphasize the specificity of the Court in this domain. We have been invited to present our work during the last annual meeting of CARIN

and intend to continue this exercise at the regional level with the different ARIN groups.

Excellencies,

Madam Prosecutor has explained the importance of financial investigations as such for the completion of her mandate.

For my part, I would like to conclude by stressing that the question of the recovery of assets is not only a matter of financial resources. It goes directly to the credibility of the institution in terms of its engagement with victims and its fight against impunity. It is therefore of key importance to have joint efforts and come up with innovative solutions to avoid accepting the *status quo*.

I am looking forward to hearing contributions from States representatives today and to engage further with them in the months to come.

Thank you.