

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **13 April 2017**

TRIAL CHAMBER III

Before: Judge Joyce Aluoch, Presiding Judge
Judge Geoffrey Henderson
Judge Chang-ho Chung

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF

THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO

Public

**Prosecution's Response to the Defence's request for suspension of the reparations
proceedings (ICC-01/05-01/08-3513)**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Ms Fatou Bensouda, Prosecutor
Mr James Stewart
Mr Jean-Jacques Badibanga

Counsel for the Defence

Mr Peter Haynes
Ms Kate Gibson

Legal Representatives of Victims

Ms Marie-Edith Douzima-Lawson

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Ms Paolina Massidda

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

Victims Participation and Reparations Section

Ms Isabelle Guibal

Trust Fund for Victims

Mr Pieter de Baan

Submissions

1. The Prosecution hereby responds to—and opposes—Mr Bemba’s request to suspend the reparations proceedings from the period after the selection of experts and finalisation of letters of instruction until the Appeals Chamber renders its Judgment on the Conviction Decision.¹ The harm caused by Mr Bemba’s crimes has remained unaddressed for more than 14 years. A suspension of the reparations proceedings would further—and unwarrantedly—delay the victims’ access to reparations. Notably, none of Mr Bemba’s arguments justifies his request for suspension:

2. *First*, Mr Bemba has been found guilty beyond reasonable doubt.² Such a finding has consequences in the Rome Statute. Indeed, in the event of a conviction, the Trial Chamber shall pronounce a sentence and establish principles relating to reparations, and may issue a reparations order.³ Consistent with the jurisprudence of other international criminal courts,⁴ the presumption of innocence does not apply to convicted persons pending the resolution of their appeals.⁵ This position is consistent with the elevated standard of review applicable in appellate proceedings whereby the appellant has the burden of showing an error that invalidates the trial judgement, rather than attempting to initiate a trial *de novo*.⁶

¹ [ICC-01/05-01/08-3513](#) (“Bemba Request”). In its e-mail of 4 April 2017 (16:34), Trial Chamber III indicated that it considered the Defence submission seeking a formal suspension of the reparations proceedings as a new request triggering the deadline for responses pursuant to regulation 34(b). The Prosecution defers to the Legal Representatives’ proposed instructions to the experts (ICC-01/05-01/08-3512-Red) and the Trust Fund for Victims’ (“TFV”) observations.

² [ICC-01/05-01/08-3343](#) (“Conviction Decision”). Mr Bemba’s submission that the “[reparations] process is inconsistent with the rights of the accused [as] it operates as an effective presumption of guilt” is inapposite. *See Bemba Request*, para. 23.

³ Articles 75 and 76 of the Rome Statute; [Lubanga Reparations AJ](#), para. 52.

⁴ *Prosecutor v Rasim Delić*, IT-04-83-A, [Decision on the outcome of the proceedings](#), 29 June 2010, para. 14 (“the presumption of innocence does not apply to persons convicted by Trial Chambers pending the resolution of their appeals”).

⁵ *See also* [ICC-01/11-01/11-175 OA3](#), para. 25 (“[t]he first aspect of the presumption of innocence provides that, within the context of court proceedings, the accused shall be presumed innocent *until proven guilty beyond a reasonable doubt* [...]”). Emphasis added.

⁶ [ICC-01/04-01/06-3121-Red A5](#) (“*Lubanga AJ*”), paras. 17-21, 23-27 and 56 (“[t]he Appeals Chamber

3. *Second*, the Appeals Chamber has already found that reparations proceedings may continue pending appeal proceedings against a Conviction Decision. Indeed, pursuant to article 81(4) only the *execution* of a reparations order must be suspended pending the Appeals Chamber’s confirmation of the Conviction Decision.⁷ Hence, notwithstanding pending appellate proceedings, a Trial Chamber is not barred from taking interim steps with a view to issuing a reparations order and eventually doing so.
4. *Third*, contrary to Mr Bemba’s submissions,⁸ in the *Lubanga* case Trial Chamber I issued its reparations order on 7 August 2012⁹ and, thus, before the Appeals Chamber upheld the Conviction Decision on 1 December 2014.¹⁰
5. *Fourth*, appellate proceedings regarding the Conviction Decision in this case are yet to be finalised.¹¹ A Prosecution request for further submissions pursuant to regulation 28 is still pending before the Appeals Chamber¹² and an oral hearing—convened in all other appeal proceedings against article 74 decisions—has not been scheduled.¹³

considers that appellate proceedings significantly differ in their nature and purpose from pre-trial and trial proceedings. Importantly, appellate proceedings at the Court are of a corrective nature, which finds expression in, *inter alia*, the standard of review on appeal, as set out above. [...].”

⁷ [ICC-01/04-01/06-2953 A A2 A3 OA21](#) (“*Lubanga* Admissibility Reparations Decision”), para. 86: “[...] the Appeals Chamber notes that, given that Mr Lubanga has also appealed the Conviction Decision, an order for reparations could not, in any event, have been executed, unless and until Mr Lubanga’s conviction had been confirmed by the Appeals Chamber. This is because of article 81 (4) of the Statute, which expressly provides that: ‘[...] execution of the decision [of conviction] [...] shall be suspended during the period allowed for appeal and for the duration of the appeal proceedings’. Given that an order for reparations depends upon there having been a conviction, if the decision on conviction cannot be executed unless and until it is confirmed on appeal, it follows that an order for reparations also cannot be executed until that time. [...]”. In that decision, the Appeals Chamber suspended pursuant to article 82(3) the Trial Chamber’s reparations order pending the resolution of Mr Lubanga’s appeal against it.

⁸ *Contra* [Bemba Request](#), para. 28.

⁹ [ICC-01/04-01/06-3129 A A2 A3](#) (“*Lubanga* Reparations AJ”), para. 38 holding that [Trial Chamber I’s “Decision establishing the principles and procedures to be applied to reparations”, [ICC-01/04-01/06-2904](#)] “contains sufficient elements to be an order for reparations within the meaning of article 75 of the Statute, subject to the amendments detailed in this judgment”. The Appeals Chamber partially overturned Trial Chamber I’s decision and amended the reparations order.

¹⁰ [Lubanga AJ](#).

¹¹ *Contra* [Bemba Request](#), para. 30.

¹² See [ICC-01/05-01/08-3498 A](#) (“Prosecution Regulation 28 Request”), filed on 8 February 2017. Mr Bemba responded on 2 March 2017: [ICC-01/05-01/08-3506 A](#).

¹³ See Prosecution Regulation 28 Request, para. 8, where the Prosecution noted that some issues should be further ventilated in an oral hearing. The decision to hold an oral hearing falls within the Appeals Chamber’s

6. Finally, the Prosecution notes that a Trial Chamber must make a number of judicial determinations before issuing a reparations order. Indeed, since a reparations order must contain five essential elements,¹⁴ reparations proceedings require numerous and diverse interim measures and decisions and, as a result, can be lengthy. As an example, in the *Katanga* case Trial Chamber II issued its Reparations Order on 24 March 2017,¹⁵ thus three years after the Conviction Decision was rendered on 7 March 2014.¹⁶ In the *Lubanga* case, five years after the Conviction Decision was issued on 14 March 2012¹⁷ and more than two years after that Decision was upheld on appeal on 1 December 2014,¹⁸ Trial Chamber II has yet to determine the amount for which Mr Lubanga is responsible for reparations, which may then be subject to appeal.¹⁹

7. For these reasons, suspending all reparations proceedings in this case until after the Appeals Chamber has rendered its Judgment on the Conviction Decision would substantially and unnecessarily delay the victims' access to reparations. The Court can surely undertake steps within reasonable financial parameters, bearing in mind the victims' interests and expectations, to facilitate and expedite the Trial Chamber's determination of its reparations order. Moreover, there is no risk of irreparable harm since in the unlikely event of reparations proceedings finalising prior to the completion of the appeal, the order would not be executed.²⁰

discretion. See ICC-01/04-02/12-199 A, para. 13.

¹⁴ [Lubanga Reparations AJ](#), paras. 1, 32.

¹⁵ [ICC-01/04-01/07-3728](#) (“*Katanga* Reparations Order”).

¹⁶ [ICC-01/04-01/07-3436](#) (“*Katanga* TJ”). Both the Prosecution and Defence withdrew their notice of appeals against the Conviction Decision.

¹⁷ [ICC-01/04-01/06-2842](#) (“*Lubanga* TJ”).

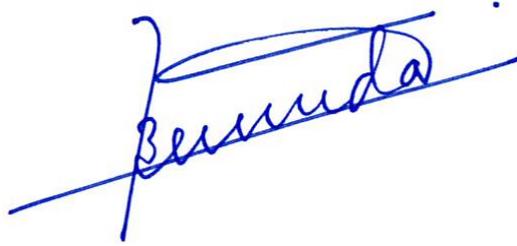
¹⁸ [Lubanga AJ](#).

¹⁹ [Lubanga Reparations AJ](#), para. 242. On 21 October 2016, Trial Chamber II approved the TFV's proposed plan on collective reparations ([ICC-01/04-01/06-3251](#)) and on 6 April 2017, it approved the first stage of the TFV's proposed programmatic framework ([ICC-01/04-01/06-3289](#)).

²⁰ [ICC-01/11-01/11-387](#) OA4, para. 22.

Conclusion and Relief sought

8. Because of the foregoing, the Prosecution requests the Trial Chamber to reject Mr Bemba's request to suspend the reparations proceedings.



Fatou Bensouda, Prosecutor

Dated this 13th day of April 2017

At The Hague, The Netherlands