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

Date: **06/07/2018**

TRIAL CHAMBER III

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Chang-ho Chung
Judge Kimberly Prost

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

Public

**Mr. Bemba's response to the "Order inviting submissions following the Appeals
Decision"**

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

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A. BACKGROUND

1. On Friday, 8 June 2018, the Appeals Chamber reversed Mr. Bemba's conviction and entered an acquittal in case ICC-01/05-01/08.¹

2. The following Monday, on 11 June 2018, Mr. Bemba filed his *Notice of withdrawal of "Mr. Bemba's request for recusal of Trial Chamber III from the reparations proceedings"*.² In the Withdrawal Notice, Mr. Bemba submitted:

On the basis that the reparations proceedings are now discontinued, Mr. Bemba hereby withdraws his Recusal request.³

3. On 13 June 2018, Trial Chamber III issued its *Order inviting submissions following the Appeals Decision*,⁴ in which it invited 'the Defence, the Legal Representative of the Victims, the Office of Public Counsel for Victims, the Office of the Prosecutor and the Trust Fund for Victims to file consequential submissions on the reparations proceedings before this Chamber, if they so wish, by 29 June 2018.'⁵

4. On 20 June 2018, the Legal Representatives of Victims filed their *Demande conjointe des Représentants légaux des victimes de prorogation de délai suite à l'« Order inviting submissions following the Appeals Decision »*, ICC-01/05-01/08-3639, requesting an extension of time to file submissions on reparations until 20 July 2018.⁶ This delay was granted in part, and the parties and participants were given until 6 July 2018 to file the present submissions.⁷

¹ ICC-01/05-01/08-3636-Conf, para. 198.

² ICC-01/05-01/08-3638.

³ ICC-01/05-01/08-3638, para. 3.

⁴ ICC-01/05-01/08-3639.

⁵ ICC-01/05-01/08-3639, para. 2.

⁶ ICC-01/05-01/08-3641.

⁷ ICC-01/05-01/08-3644.

B. SUBMISSIONS

5. The Appeals Chamber in *Lubanga* confirmed that, in line with the statutory framework of the ICC:⁸

[r]eparation orders are intrinsically linked to the individual whose criminal responsibility is established in a conviction and whose culpability for these criminal acts is determined in a sentence.

6. Given that there is no conviction in this case, it follows that there can be no reparations. In the *Ruto and Sang* case, the Trial Chamber correctly found that the termination of the case against Mr. Ruto and Mr. Sang rendered it *functus officio* for the purposes of reparations proceedings:⁹

[...] the case against Mr Ruto and Mr Sang has been terminated. Consequently, Trial Chamber V(A) is no longer seised of proceedings against those persons before the Court. Accordingly, this Chamber cannot take any decision on reparation matters related to the Ruto and Sang case under Article 75 of the Statute.

7. In these circumstances, where the Trial Chamber has no ability to make any decisions or take subsequent orders in relation to reparations, it is difficult to see what substantive additional submissions could be presented, particularly given that the parties have already briefed extensively on the question of reparations, and have indeed filed 'any other last arguments they wish to be considered'¹⁰ in these matters.

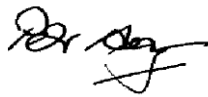
⁸ ICC-01/04-01/06-3129, para. 65. *See also* ICC-01/04-01/06-3129, para. 8.

⁹ ICC-01/09-01/11-2038, para. 6.

¹⁰ ICC-01/05-01/08-3532-Conf, para. 16.

8. Moreover, both the Principal Counsel and the Legal Representative of Victims have been representing victims in this case for up to a decade. It is respectfully submitted that it cannot be the case that, during the years in which they have been consulting with the victims in this case, they have never discussed the possibility of an acquittal, nor the wishes of their victims in this eventuality. A failure to do so would amount to both an abdication of their professional duties and a manifest failure to manage victims' expectations. Between them, the Principal Counsel and LRV have filed 222 pages of pleadings in the reparations case. They had every opportunity to present the wishes of their clients in the case of an acquittal in these 222 pages. As such, the purpose of additional submissions is further undermined.

9. Moreover, Mr. Bemba notes that one of the consequences of the termination of the reparations proceedings is that any defamatory statements would not be covered by any form of privilege and would thereby be actionable.



Peter Haynes QC

Lead Counsel for Mr. Jean-Pierre Bemba

Done at The Hague, The Netherlands, 6 July 2018