

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 6 July 2018

TRIAL CHAMBER III

**Before: Judge Joyce Aluoch, Presiding
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 document

Final observations on reparations following the acquittal of Mr Jean-Pierre Bemba

Source:

The Trust Fund for Victims

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

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Background

1. On 21 March 2016, pursuant to article 74 of the Statute, Trial Chamber III (“Trial Chamber”) convicted Mr Jean-Pierre Bemba Gombo (“Mr Bemba”) under article 28 (a) of the Statute of the war crimes and crimes against humanity of murder and rape, and the war crime of pillaging.¹
2. On 8 June 2018, the Appeals Chamber, by majority, reversed Mr Bemba’s conviction (“Appeals Acquittal Judgment”).²
3. On 13 June 2018, the Trial Chamber invited³ the parties and participants, including the Trust Fund for Victims (“Trust Fund”), to file, if they so wished, any consequential submissions on the ongoing reparations proceedings in light of the Appeals Acquittal Judgment by, following the granting of an extension of time,⁴ 6 July 2018.⁵
4. The Trust Fund hereby submits the requested observations.

Final Observations of the Trust Fund

5. The Trust Fund recalls that its primary interest in reparations proceedings relates to its institutional role as the implementing body of orders for reparations issued by the Court’s trial chambers. Therefore, the Trust Fund’s role in pre-order reparations proceedings is distinct from those of the parties and participants of specific cases. Mindful of this, the Trust Fund does not intend to make observations on the effect of the Appeals Acquittal Judgment on the reparations proceedings in the *Bemba* case, beyond noting that the current jurisprudence of the Court would result in the discontinuance of these proceedings without the issuance of an order for reparations pursuant to article 75 of the Statute.⁶ The effect of this

¹ Judgment pursuant to Article 74 of the Statute in the case against Jean-Pierre Bemba Gombo, 21 March 2016, [ICC-01/05-01/08-3343](#) (“Bemba Trial Judgment”).

² Judgment on the appeal of Jean-Pierre Bemba Gombo against Trial Chamber III’s “Judgment pursuant to Article 74 of the Statute”, 8 June 2018, [ICC-01/05-01/08-3636-Red](#) (“Bemba Appeals Acquittal Judgment”).

³ Order inviting submissions following the Appeals Decision, 13 June 2018, [ICC-01/05-01/08-3639](#).

⁴ Decision on the Legal Representatives’ request for extension of time, 26 June 2018, [ICC-01/05-01/08-3644](#). (“Time Extension Decision”). *See also* 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, 20 June 2018, [ICC-01/0501/08-3641](#).

⁵ Time Extension Decision, [ICC-01/0501/08-3641](#), p. 5.

⁶ *See e.g.* Trial Chamber V (a), *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on the Requests regarding Reparations, 1 July 2016, [ICC-01/09-01/11-2038](#), para. 7, wherein the Trial Chamber *inter alia* declined, by majority, to begin reparations proceedings, holding that: “[A] criminal court can only address

jurisprudence is that the Trust Fund will not be seized of a reparations order pursuant to regulation 50 (b) of the Regulations of the Trust Fund (“TFV Regulations”), meaning that its ‘reparations mandate’ will not be activated in this case.

6. However, the Trust Fund does not only carry out its role with regard to reparations, but also with regard to its ‘assistance mandate’, as set out in regulation 50 (a) of the TFV Regulations, read with article 79 of the Statute and rule 98 (5) of the Rules of Procedure and Evidence. According to regulation 50 (a) (i), the Trust Fund “shall be considered to be seized when [the Board] considers it necessary to provide physical or psychological or material support for the benefit of victims and their families”.
7. In this regard, the Trust Fund would like to take the opportunity in its final observations to inform the Trial Chamber that, following the Appeals Acquittal Judgment, the Trust Fund’s Board of Director’s (“Board”) took a decision to accelerate the launch of a programme under its assistance mandate for the benefit of victims and their families in the situation of the Central African Republic (“CAR I”).⁷ This unanimous decision was formally communicated to the Assembly of States Parties on 13 June 2016 (“Board Communication to the ASP”).⁸
8. The Board Communication to the ASP explained in the relevant part that:

Activities undertaken under the Fund’s assistance mandate are distinct from the judicial proceedings of the Court and do not require the conviction or even the identification of the perpetrator(s) of the harms suffered by victims. It is necessary that victims have suffered harms from crimes under the jurisdiction of the Court as defined by the “situation” under investigation by the Prosecutor. In taking its decision, the Board observed that, irrespective of the outcome of the judicial proceedings, victims who presented themselves to the Court in the context of the Bemba case are, by definition, victims of the “situation” in CAR I.

[...]

compensation for harm suffered as a result of crimes if such crimes have been found to have taken place and the person standing trial for his or her participation in those crimes is found guilty”. No reparations proceedings were initiated following the first-instance acquittal in the case against Mr Mathieu Ngudjolo Chui; *See also* Trial Chamber II, Order for Reparations pursuant to Article 75 of the Statute, 24 March 2017, [ICC-01/04-01/07-3728-tENG](#), paras 155-161, in relation to the effect on reparations of Mr Katanga’s acquittal for the crime of using children under the age of 15 years to participate actively in hostilities as a war crime under article 8 (2) (e) (vii) of the Statute.

⁷ *See* Press Release, “[Following Mr Bemba’s acquittal, Trust Fund for Victims at the ICC decides to accelerate launch of assistance programme in Central African Republic](#)”, published on 13 June 2018.

⁸ Communication from the Chair of the Board of Directors of the Trust Fund for Victims to the President of the Assembly of States Parties, 13 June 2018 (“[Board Communication to the ASP](#)”).

The Board has instructed the Fund’s Secretariat to urgently undertake a victim harms and needs assessment for the purposes of launching an assistance mandate programme in CAR, which will be expedited by incorporating the previous assessment findings relevant to sexual and gender based violence and by taking account of the harms suffered by victims and their families in the *Bemba* case.

As such, the Board has instructed the Secretariat to consider, first, the harms suffered by victims in the *Bemba* case and, second, harms suffered from additional sexual and gender based violence arising out of the situation in CAR I. The Board has further directed the Secretariat to urgently engage in consultations with the competent CAR government authorities, based on the notion of reparative complementarity relevant to the Fund’s assistance mandate, as well as with civil society, international actors, and the legal representative of victims in the *Bemba* case.⁹ [Emphases added.]

9. In relation to the above, the Trust Fund would make the following observations:
- a. First, the Trust Fund would like to express its sincere appreciation for the proactive and very helpful support that it has received to move forward with its CAR I assistance mandate programme from the legal representatives of victims in this case (“Legal Representatives”) and numerous sections of the Registry, in particular but not limited to: the Immediate Office of the Registry, the Division of External Operations, the CAR field office, the Victims Participation and Reparations Section (“VPRS”), and the Victims and Witnesses Unit.
 - b. It is the Trust Fund’s understanding that, leading up to the Appeals Acquittal Judgment, the Legal Representatives were in the process of gathering updated contact and location information of their clients, as well as information on their current living situations and views on how best to repair the harms that they had suffered. The Trust Fund understands that there remains a need to finish the collection of such information for purposes of assisting victims.
 - c. For designing its CAR I assistance mandate programme as instructed by the Board, the Trust Fund’s ability to access case victim information already deposited with the Court in the context of the *Bemba*, or in the possession of the Legal Representatives, is contingent on the Legal Representatives having a representation mandate that would permit them to grant consent on behalf of their clients to sharing this information with the Trust Fund. Absent such continued authority and without the

⁹ [Board Communication to the ASP](#), pp. 1-2.

assistance of the Legal Representatives, the Trust Fund considers that there is a risk that it would encounter delays and difficulties in obtaining consent directly from the case victims.

- d. The Trust Fund does not know as it does not currently have access, but assumes that there may be information relevant to the scope and degree of harms suffered in the CAR I situation contained within the case record and currently classified as confidential.

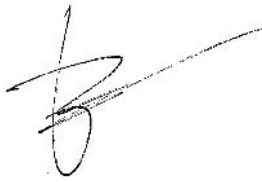
Except for the notification provisions set out in regulation 50 (a) (ii) and (iii) of the TFV Regulations, the Trust Fund's assistance mandate activities do not fall within the purview of individual trial chambers. It is the Board's role to acknowledge the harm suffered by situation victims in light of Trust Fund's concomitant function to provide assistance to such victims and irrespective of the question of culpability. However, the Trust Fund respectfully submits that this does not mean that trial chambers may not support or encourage the endorsement of Trust Fund assistance mandate activities, particularly where those activities are to the benefit of victims of a situation that includes victims of a case that was before that same trial chamber. Such support should not prejudice Mr Bemba in any manner because, as already set out above, the Trust Fund's assistance mandate activities are not meant to engage with the individual criminal responsibility of alleged perpetrators.

10. Accordingly, Trust Fund respectfully invites the Trial Chamber to make observations concerning (i) the degree and scope of harm suffered by victims of the *Bemba* case, insofar as they are part of the larger CAR I situation; and (ii) the need to continue the representation mandate of the Legal Representative in *Bemba* for purpose of consultation and sharing of information –present due consent by the victims- for the reasons stated above.
11. The Trust Fund would also like to invite the Trial Chamber to encourage the Government of Central African Republic and other relevant stakeholders to cooperate with the development and implementation of the assistance programme.
12. Lastly, the Trust Fund would respectfully request that the Trial Chamber consider including in any final decision or order in the present reparations proceedings, the following:
 - a. Affirm that the victims of the *Bemba* case are victims of the CAR I situation and that this status is not disturbed by the Appeals Acquittal Judgment;

- b. Encourage the Counsel Support Section to consider continuing the mandate of legal representation of the Legal Representatives in the *Bemba* case in order to ensure that these case victims may be efficiently integrated into a CAR assistance programme.

FOR THE FOREGOING REASONS

The Board of Directors respectfully submits its final observations in these reparations proceedings.



Pieter W.I. de Baan
Executive Director, Trust Fund for Victims,
on behalf of the Board of Directors of the Trust Fund for Victims

Dated this 6 July 2018

At The Hague, The Netherlands