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**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*

**Defence Request for an Extension of Time to File Submissions Relevant to  
Reparations**

**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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## I. INTRODUCTION

1. As foreshadowed by the Trial Chamber,<sup>1</sup> the present proceedings do not necessarily lend themselves to the adoption of the reparations principles as set out in the *Lubanga* case.<sup>2</sup> The reparations phase in the *Bemba* case will be unique in international criminal law. 5,229 people were authorised to participate as victims.<sup>3</sup> In the intervening period, the Central African Republic has been engulfed by protracted and horrific violence, with the number of dead in the thousands, and an estimated one million people displaced.<sup>4</sup> Against this backdrop, formulating and implementing a meaningful reparations regime is a formidable task.

2. The Trial Chamber's *Order requesting submissions relevant to reparations* ("Reparations Order"),<sup>5</sup> requires Mr. Bemba to formulate a position (and provide instructions) on matters which go to the heart of the reparations process; the criteria and methodology to be applied to assess the eligibility of victims, the relevant harms, the scope of liability of Mr. Bemba and the precise extent of his monetary obligations; the type and modalities of reparations appropriate.<sup>6</sup> This is by no means a straightforward or insignificant task. The parties have been asked to file submissions by **15 September 2016**.

3. Mr. Bemba, who has a statutory right to participation in the reparations process,<sup>7</sup> is in the process of appealing against both his conviction and sentence. He has the right to file briefs in the order of 200 pages<sup>8</sup> and 100 pages<sup>9</sup> on **19**

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<sup>1</sup> ICC-01/05-01/08-3410, para. 7a.

<sup>2</sup> ICC-01/04-01/06-3129-AnxA.

<sup>3</sup> ICC-01/05-01/08-3343, para 18.

<sup>4</sup> OTP, Situation in the Central African Republic II. Article 53(1) Report, 24 September 2014, paras. 88, 255-258; 260-263.

<sup>5</sup> ICC-01/05-01/08-3410.

<sup>6</sup> ICC-01/05-01/08-3410, para. 7.

<sup>7</sup> ICC Statute, Article 75(3); Rules of Procedure and Evidence, Rule 97(3).

<sup>8</sup> ICC-01/05-01/08-3405.

<sup>9</sup> Regulation 58(5) of the Regulations of the Court limits the document in support of the appeal to 100 pages in length.

**September**<sup>10</sup> and **20 September 2016**<sup>11</sup> respectively.<sup>12</sup> These are complex documents, the preparation of which involves the review of evidence, law, and an enormous case record. The Appeals Chamber has accepted that the case raises “complex and novel issues”<sup>13</sup> and has granted extensions of time and pages on this basis.<sup>14</sup>

4. The Reparations Order would require Mr. Bemba to file his observations on reparations during the period in which he is preparing his appeals against conviction and sentence. He does not have the resources to do so. As such, by the present application, Mr. Bemba seeks a limited and discrete extension of 60 days within which to comply with the Reparations Order, which would allow him meaningfully to participate in the process, and would not delay the execution of an eventual reparations order in the present case. Good cause exists for the requested delay as these concurrent proceedings would force Mr. Bemba to sacrifice time and resources essential for the preparation of his appeals, or to compromise his participation in the reparations phase.

## II. PROCEDURAL HISTORY

5. On 21 March 2016, Trial Chamber III (The Trial Chamber) rendered its Judgment under Article 74 of the Statute (“the Judgment”).<sup>15</sup> The Trial Chamber convicted Mr. Jean-Pierre Bemba (“the Appellant”) of murder as a crime against humanity under Article 7(1)(a) of the Statute and as a war crime under Article 8(2)(c)(i) of the Statute; rape as a crime against humanity under Article 7(1)(g) of the

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<sup>10</sup> ICC-01/05-01/08-3370.

<sup>11</sup> Regulation 58(1) requires the Appellant to file a document in support of the appeal within 90 days of notification of the relevant decision.

<sup>12</sup> The Defence intends to file a request for an extension of an additional 30 days within which to file its sentencing appeal brief. The request will be shortly forthcoming.

<sup>13</sup> ICC-01/05-01/08-3405, para. 10.

<sup>14</sup> ICC-01/05-01/08-3405, para. 11.

<sup>15</sup> ICC-01/05-01/08-3343.

Statute and as a war crime under Article 8(2)(e)(vi) of the Statute; and pillaging as a war crime under Article 8(2)(e)(v) of the Statute.<sup>16</sup>

6. On 4 April 2016, the Appellant filed a notice of appeal against the Judgment pursuant to Rule 150(1) of the Rules of Procedure and Evidence, and Regulation 57 of the Regulations of the Court.<sup>17</sup>

7. On 5 April 2016, the Appellant requested a variation of the time limits for the filing of its document in support of Appeal to 180 days after the notification of the Conviction Decision.<sup>18</sup> On 15 April 2016, the Appeals Chamber granted that extension of time and ordered the Appellant to file his Conviction Appeal Brief on Monday, 19 September 2016 at 16h00.<sup>19</sup>

8. On 21 June 2016, the Trial Chamber rendered its Decision on Sentence pursuant to Article 76 of the Statute and sentenced Mr. Bemba to a total of 18 years of imprisonment.<sup>20</sup> On 22 July 2016, both the Prosecution and the Defence filed a notice of appeal against the Decision on Sentence.<sup>21</sup>

9. On 22 July 2016, The Trial Chamber filed an order requesting submissions relevant to reparations and set the deadline for these submissions on 15 September 2016.<sup>22</sup> On 3 August 2016, the Chamber informed by email the parties and participants that the observations to be submitted on reparations would not be subject to page limit in accordance with regulation 37 of the Regulations of the Court.<sup>23</sup>

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<sup>16</sup> ICC-01/05-01/08-3343, para. 752.

<sup>17</sup> ICC-01/05-01/08-3348.

<sup>18</sup> ICC-01/05-01/08-3353.

<sup>19</sup> ICC-01/05-01/08-3370.

<sup>20</sup> ICC-01/05-01/08-3399.

<sup>21</sup> ICC-01/05-01/08-3411 A2 and ICC-01/05-01/08-3412 A3.

<sup>22</sup> ICC-01/05-01/08-3410.

<sup>23</sup> Email from Pons, Niccolo sent on 03 August 2016 at 14:34.

10. On 4 August 2016, the Office of Public Counsel for the Victims requested to be authorised to submit observations on reparations.<sup>24</sup> The Chamber granted this request on 5 August 2016.<sup>25</sup> On 8 August and 10 August 2016, Queen's University Belfast Human Rights Centre and the REDRESS Trust respectively, filed leaves to submit observations on reparations.<sup>26</sup>

11. The Defence submits that the timeline to submit observations as set infringes Mr. Bemba's right to participate effectively in the proceedings before him, being currently involved in the drafting of two appeal briefs. The Accused is also not in possession of all the information that would enable him to make thorough and complete submissions on reparations.

### III. APPLICABLE LAW

12. Article 75(3) of the Rome Statute provides that "[b]efore making an order under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person..."

13. Rule 97 of the Rules of Procedure and Evidence governs the assessment of reparations, and provides at Rule 97(3) that "[i]n all cases, the Court shall respect the rights of victims and the convicted person."

14. Regulation 35 of the Regulations of the Court provides:

1. Applications to extend or reduce any time limit as prescribed in these Regulations or as ordered by the Chamber shall be made in writing or orally to the Chamber

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<sup>24</sup> Email from Massidda, Paolina sent on 04 August 2016 at 09:12.

<sup>25</sup> Email from Pons, Niccolo sent on 05 August 2016 at 12:42.

<sup>26</sup> ICC-01/05-01/08-3420; ICC-01/05-01/08-3421.

seized of the matter setting out the grounds on which the variation is sought.

2. The Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard. [...]

15. Following a determination of good cause, the Appeals Chamber must then determine “whether the length of extension requested is justified.”

#### IV. SUBMISSIONS

##### (a) **The concurrent and overlapping deadlines mitigate in favor of a delay**

16. The Appeals Chamber has previously held that: “the defence must not be placed in the position of having to prepare submissions on sentence, reparations or for an appeal brief within an unreasonably short period of time (e.g. within 30 days for an appeal) with an inadequate legal team.”<sup>27</sup>

17. With the assistance of the Registry, the Defence has organised itself to be in a position to prepare and file its appeals against conviction and sentence within the designated delays.<sup>28</sup> The Defence also requested (and was granted) an extension of time for the filing of its appeal against conviction.<sup>29</sup> This request was based on the time which the newly-imposed team would need to draft and prepare its arguments on appeal. This organisation was done prior to receipt of the Reparations Order.

18. The Reparations Order requires the parties to provide observations on numerous significant factors: the application of the principles established in *Lubanga*; the criteria and methodology to be applied to assess the eligibility of

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<sup>27</sup> ICC-01/04-01/06-2800, para. 58.

<sup>28</sup> The Defence intends to file a request for an extension of an additional 30 days within which to file its sentencing appeal brief. The request will be shortly forthcoming.

<sup>29</sup> ICC-01/05-01/08-3353; ICC-01/05-01/08-3370.

victims, the relevant harms, the scope of liability of Mr. Bemba and the precise extent of his monetary obligations; the type and modalities of reparations appropriate and the potential appointment of experts to assist the Chamber.<sup>30</sup> Mr. Bemba's right to participate in this phase<sup>31</sup> must translate, in practical terms, to being informed by his lawyers as to the existing precedent and principles for the reparations phase, before formulating instructions as to how each of these issues should be addressed.

19. Compliance with the Reparations Order will jeopardise the preparation of Mr. Bemba's (already overlapping) appeals. In simple terms, tasks for which time has been allocated in this period to assist with drafting the appeal brief will have to be set aside in order to dedicate resources towards compliance with the Reparations Order. There is also the issue of instructions. Mr. Bemba has finite time with his lawyers. Providing any level of detailed and meaningful instructions will encroach dramatically on his ability to review and discuss his briefs on appeal.

20. Good cause exists for a limited extension of 60 days to circumvent these obstacles, and allow the Defence to deal with all matters both in a timely manner and in a way which properly and professionally discharges its functions.

**(b) The circumstances of this case further mitigate in favour of a delay**

21. 5,229 participating victims is an extraordinary statistic. The scope of participation in the Bemba case far exceeds that of previous trials.<sup>32</sup> The decision to permit this breadth of participation necessarily has a concomitant impact on the resources needed to administer their involvement.

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<sup>30</sup> ICC-01/05-01/08-3410, para. 7.

<sup>31</sup> ICC Statute, Article 75(3); Rules of Procedure and Evidence, Rule 97(3).

<sup>32</sup> ICC-01/05-01/08-3078, para. 4.



22. At the outset of the case, the Defence performed an initial review of the 5,229 victims applications, in order to make submissions on whether each victim fulfilled the criteria for participation on a *prima facie* basis.<sup>33</sup> This initial review was conducted in the absence of factual findings from the Trial Chamber as to the scope of the Accused's culpability.

23. A few points are worth noting. Numerous victims who have been authorised to participate in the proceedings on a *prima facie* basis allege personal harm for crimes which fall outside the temporal and geographical scope of the crimes for which Mr. Bemba has now been convicted.<sup>34</sup> Secondly, the victims' applications remain heavily redacted, despite Defence requests for their provision in lesser-redacted form,<sup>35</sup> making any review difficult. Moreover, the Defence has identified duplicates within the applications, with applicants alleging exactly identical material or moral damage.<sup>36</sup>

24. The Defence is not suggesting that its compliance with the Reparations Order is contingent on a complete review of all 5,229 victims applications (nor would the requested 60 day delay permit it to do so). However, some base level of review of the original victims applications is necessary in order to identify, even with broad

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<sup>33</sup> ICC-01/05-01/08-3343, para. 18.

<sup>34</sup> See for example, a/0494/11 to a/0499/11, a/0475/11, a/0187/11, a/0189/11, a/0190/11, a/0191/11, a/0192/11, a/0194/11, a/0195/11, a/0196/11, a/0349/11 to a/0357/11, a/0359/11 to a/0361/11, a/0391/11 to a/0393/11, a/0395/11 to a/0406/11, a/0005/10, a/0007/10, a/0566/08, a/0563/08, a/0600/06, a/0557/08, a/0549/08.

<sup>35</sup> ICC-01/05-01/08-859, paras. 4-9; ICC-01/05-01/08-882, paras. 7-8; ICC-01/05-01/08-945, paras. 13-19; ICC-01/05-01/08-968, paras. 9-12; ICC-01/05-01/08-995, paras. 11-14; ICC-01/05-01/08-1009, paras. 11-19; ICC-01/05-01/08-1053, paras. 7-18; ICC-01/05-01/08-1082, paras. 11-25; ICC-01/05-01/08-1413, paras. 16-25; ICC-01/05-01/08-1599, paras. 9-20; ICC-01/05-01/08-1754, paras. 34-37; ICC-01/05-01/08-1810, paras. 22-28; ICC-01/05-01/08-1859, paras. 16-22; ICC-01/05-01/08-1906, paras. 15-21; ICC-01/05-01/08-1944, paras. 16-22; ICC-01/05-01/08-2001, paras. 16-22; ICC-01/05-01/08-2024, paras. 23-28; ICC-01/05-01/08-2056, paras. 19-25; ICC-01/05-01/08-2077, paras. 20-26; ICC-01/05-01/08-2122, paras. 21-26; ICC-01/05-01/08-2135, paras. 38-43; ICC-01/05-01/08-2163, paras. 37-42; ICC-01/05-01/08-2181, paras. 32-37; ICC-01/05-01/08-2196, paras. 29-34.

<sup>36</sup> Compare, for example, a/0462/08 with a/0463/08; a/0129/09 with a/0431/09; and a/0470/08 with a/0471/08 and a/0472/08.

brushstrokes, the issues facing the parties and the Trial Chamber in the reparations phase. This takes time.

25. In addition, in order properly to assist the Trial Chamber, the observations should be meaningful. The Defence needs to evaluate the extent of the harm caused to victims, make propositions for the modalities and forms of reparations, familiarise themselves with the the principles established in *Lubanga*, and any subsequent obstacles in their application, and evaluate the monetary amount for compensation. These are not tasks which can be completed without significant background research and work on the part of Mr. Bemba's lawyers. The circumstances of this case constitute good cause warranting the requested extension of 60 days.

26. Granting the requested delay of 60 days would also allow renewed efforts on the part of the LRV to make contact with the remaining successors of deceased victims<sup>37</sup> whom she has been prevented from meeting because of the security situation in the Central African Republic.<sup>38</sup> This would put the parties in the position of having complete information on which to make their observations. Extensions of time have been granted in similar circumstances during the reparations phase.<sup>39</sup>

27. Mr. Bemba has always sought to cooperate fully with, and participate fully in the proceedings against him. The reparations phase is no exception. He cannot, however, direct resources towards this phase which are not available. Good cause exists for a discrete extension of time

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<sup>37</sup> ICC-01/05-01/08-3346, para. 50(i).

<sup>38</sup> ICC-01/05-01/08-3409, para. 7.

<sup>39</sup> ICC-01/04-01/07-3645-tENG, *Decision granting extension of time to submit Defence observations on requests for reparations*.

**(c) The requested extension will not delay the execution of reparations orders**

28. An order for reparations cannot be executed until the Appeals Chamber has decided the appeals against conviction.<sup>40</sup> This will not happen in 2016, and likely not in 2017 if the present pace of the appeals process is maintained.<sup>41</sup> A delay of 60 days will allow Mr. Bemba to submit meaningful observations without in any way jeopardising the overall timetable for the reparations phase.

29. To this end, the Defence notes that the Trial Chamber has invited interested organisations to request leave to make submissions, pursuant to Article 75(3) and Rule 103 of the Rules.<sup>42</sup> So far, two have taken up this invitation.<sup>43</sup> The Trial Chamber will potentially be seized with a wealth of material on 15 September 2016 for its consideration and review. It is not the case that the entire process will stall and the Trial Chamber be left idle, should the requested extension be granted.

**V. RELIEF SOUGHT**

30. The factors set out above, individually and cumulatively, constitute good cause for the granting of the requested extension. The extension of time sought is necessary to safeguard the rights of the Accused to participate effectively in the proceedings against him. It is also proportionate when viewed against the scope of the tasks identified above, and will in no way delay the efficient progression of the reparations phase.

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<sup>40</sup> ICC-01/04-01/06-2953, para. 86.

<sup>41</sup> The *Lubanga* Conviction decision was rendered on 14 March 2012. The Appeal Judgement was rendered on 1 December 2014, 2 years and 9 months later. Ngjudolo was acquitted on 18 December 2012. 2 years and 2 months later, on 27 February 2015, the verdict was upheld by the Appeals Chamber.

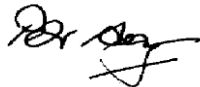
<sup>42</sup> ICC-01/05-01/08-3410, para. 8.

<sup>43</sup> Queen's University Belfast Human Rights Centre and the REDRESS Trust, see ICC-01/05-01/08-3420 and ICC-01/05-01/08-3421.

31. In view of the above submissions, the Defence respectfully requests that the Trial Chamber:

**GRANT** the Defence's request for extension of time of 60 days to comply with the Reparations Order.

The whole respectfully submitted.



Peter Haynes QC  
Lead Counsel of Mr. Jean-Pierre Bemba

Done at The Hague, The Netherlands, 16 August 2016