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Date: **5 May 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 Document

Decision on the Defence's request to suspend the reparations proceedings

Order to be notified, in accordance with regulation 31 of the Regulations of the Court, to:

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Unrepresented Victims

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Trial Chamber III (“Chamber”) of the International Criminal Court, in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, issues the following “Decision on the Defence’s request to suspend the reparations proceedings”.

I. Procedural background and submissions

1. On 21 March 2016, the Chamber in its previous composition rendered its “Judgment pursuant to Article 74 of the Statute” (“Conviction Decision”), in which Mr Bemba was found guilty.¹
2. On 4 April 2016, the Defence for Mr Bemba (“Defence”) filed a notice of appeal against the Judgment.²
3. On 21 June 2016, the Chamber rendered its “Decision on Sentence pursuant to Article 76 of the Statute” (“Sentencing Decision”).³
4. On 22 July 2016, both the Office of the Prosecutor (“Prosecution”) and the Defence filed a notice of appeal against the Decision on Sentence.⁴ The appeals proceedings are ongoing.
5. On 22 July 2016, the newly-composed Chamber made an order requesting submissions relevant to reparations.⁵ The Chamber also ordered the Registry to provide a list of experts to assist the Chamber in the reparations proceedings.
6. On 31 October 2016, the Prosecution,⁶ the Defence,⁷ the Legal Representative of Victims (“LRV”),⁸ the Office of Public Counsel for Victims (“OPCV”),⁹ the Trust

¹ Judgment pursuant to Article 74 of the Statute, 21 March 2016, ICC-01/05-01/08-3343.

² Defence Notice of Appeal against the Judgment pursuant to Article 74 of the Statute, ICC-01/05-01/08-3343, 4 April 2016, ICC-01/05-01/08-3348. On 19 September 2016, Mr Bemba filed his document in support of the appeal against the conviction, Appellant’s document in support of the appeal, 19 September 2016, ICC-01/05-01/08-3434-Conf.

³ Decision on Sentence pursuant to Article 76 of the Statute, 21 June 2016, ICC-01/05-01/08-3399.

⁴ Prosecution’s Notice of Appeal against Trial Chamber III’s “Decision on Sentence pursuant to Article 76 of the Statute”, 22 July 2016, ICC-01/05-01/08-3411; Defence Notice of Appeal against Decision on Sentence pursuant to Article 76 of the Statute, ICC-01/05-01/08-3399, 22 July 2016, ICC-01/05-01/08-3412. On 21 October 2016, both Mr Bemba and the Prosecution filed their documents in support of the appeal against the sentence, Appellant’s document in support of the appeal against sentence, 21 October 2016, ICC-01/05-01/08-3450-Conf A3; Prosecution’s Document in Support of Appeal against Trial Chamber III’s “Decision on Sentence pursuant to Article 76 of the Statute”, 21 October 2016, ICC-01/05-01/08-3451.

⁵ Order requesting submissions relevant to reparations, 22 July 2016, ICC-01/05-01/08-3410.

Fund for Victims (“TFV”)¹⁰ and the Registry¹¹ filed their observations on reparations.

7. On 22 December 2016, the Registry filed its list of experts.¹²
8. On 21 February 2017, the Chamber issued an order inviting submissions on experts to assist the Chamber in its determinations on reparations.¹³
9. On 3 April 2017, following an extension of deadline,¹⁴ the Defence filed its observations.¹⁵ It requested the Chamber to refrain from instructing expert witnesses and to suspend the reparations process at the latest after the selection of any expert(s) and the finalisation of any letter of instruction. The Defence argues that the reparations process is inconsistent with the rights of the accused as it operates as an effective presumption of guilt and would place a burden on the Defence’s resources. The Defence stresses that the appointment of experts is premature, as the Appeals Chamber is already deliberating and the experts’ work would be in vain if Mr Bemba were to be acquitted on appeal. Moreover, the Defence submits that a suspension is consistent with the prior practice of the Court.

⁶ Prosecution’s Observations on Reparations, 31 October 2016, ICC-01/05-01/08-3454.

⁷ Defence observations on reparations, 31 October 2016, ICC-01/05-01/08-3458-Conf.

⁸ Observations de la Représentante légale des victimes relativement aux réparations, 31 October 2016, ICC-01/05-01/08-3459-Conf.

⁹ Submissions relevant to reparations, 31 October 2016, ICC-01/05-01/08-3455.

¹⁰ Observations relevant to reparations, 31 October 2016, ICC-01/05-01/08-3457.

¹¹ Registry’s observations pursuant to Trial Chamber Order ICC-01/05-01/08-3410 of 22 July 2016, 31 October 2016, ICC-01/05-01/08-3460.

¹² List of Proposed Experts Pursuant to Trial Chamber III’s Decisions ICC-01/05-01/08-3410 of 22 July 2016, ICC-01/05-01/08-3442 of 7 October 2016 and ICC-01/05-01/08-3453 of 28 October 2016, 22 December 2016, ICC-01/05-01/08-3487.

¹³ Order inviting submissions on experts, 21 February 2017, ICC-01/05-01/08-3500-Conf.

¹⁴ On 28 February 2017, the LRV, the OPCV and the Defence jointly requested an extension of the deadline to file their submissions, Demande d’extension de délai suivant «Order inviting submissions on experts», ICC-01/05-01/08-3500-Conf, 28 February 2017, ICC-01/05-01/08-3503. On 2 March 2017, the Chamber granted the request for an extension of the time limit and extended the deadline for the LRV, the OPCV and the Defence to 3 April 2017. The Chamber also extended the deadline for the Prosecution, the Registry and the TFV to 13 April 2017, Order on “Demande d’extension de délai suivant «Order inviting submissions on experts», ICC-01/05-01/08-3500-Conf”, 2 March 2017, ICC-01/05-01/08-3505.

¹⁵ Defence’s Observations on Trial Chamber III’s order inviting submissions on experts, ICC-01/05-01/08-3500-Conf, 3 April 2017, ICC-01/05-01/08-3513.

10. On 13 April 2017, the Prosecution filed its Response to the Defence's request for suspension of the reparations proceedings.¹⁶ The LRV¹⁷ and the OPCV¹⁸ filed their responses on 24 April 2017, upon an extension of time being granted.¹⁹ They request the Chamber to reject the Defence's request. They argue that the pending appeal has no impact on the reparations proceedings according to the prior practice of the Court. They contend that the reparations proceedings are not prejudicial to Mr Bemba's rights but would negatively impact on the expeditiousness of the proceedings and the victims' timely access to reparations.

II. Analysis

11. Pursuant to Article 75 of the Rome Statute ("Statute") the Chamber may make a reparations order against a convicted person.

12. The Appeals Chamber in *Lubanga* identified five constitutive elements, which, at a minimum, must be contained in an order for reparations: "1) it must be directed against the convicted person; 2) it must establish and inform the convicted person of his or her liability with respect to the reparations awarded in the order; 3) it must specify, and provide reasons for, the type of reparations ordered, either collective, individual or both, pursuant to rules 97 (1) and 98 of the Rules of Procedure and Evidence; 4) it must define the harm caused to direct and indirect victims as a result of the crimes for which the person was convicted, as well as identify the modalities of reparations that the Trial Chamber considers appropriate based on the circumstances of the specific case before it; and 5) it must identify the victims eligible to benefit from the awards for reparations or set

¹⁶ Prosecution's Response to the Defence's request for suspension of the reparations proceedings (ICC-01/05-01/08-3513), 13 April 2017, ICC-01/05-01/08-3517.

¹⁷ Réponse de la Représentante légale des victimes sur « Defence's Observations on Trial Chamber III's order inviting submissions on experts, ICC-01/05-01/08-3500-Conf », 24 April 2017, ICC-01/05-01/08-3520.

¹⁸ Response to the Defence's request for suspension of the reparations proceedings (ICC-01/05-01/08-3513), 24 April 2017, ICC-01/05-01/08-3519.

¹⁹ On 11 April 2017 the OPCV requested an extension of the time limit until 24 April to respond to the Defence's request (Email from the Principal Counsel of the OPCV, 11 April 2017 16:02), which the Chamber granted to all participants on 12 April 2017 (Email from the Legal Advisor to the Trial Division, 12 April 2017 18:07).

out the criteria of eligibility based on the link between the harm suffered by the victims and the crimes for which the person was convicted.”²⁰

13. In order to be able to address these elements adequately in its reparations order, the Chamber needs to take a number of preparatory steps. In particular, the Chamber may appoint experts to assist in determining the scope, extent of any damage, loss and injury to, or in respect of victims and the appropriate types and modalities of reparations pursuant to Rule 97 (2) of the Rules of Procedure and Evidence (“Rules”).

14. The legal texts of the Court contemplate that reparations proceedings may commence in parallel to a pending appeal. The suspension of decisions is only envisaged in two settings: (1) the execution of decisions under Article 74 or 76 of the Statute which shall be suspended for the duration of appeals proceedings pursuant to Article 81 (4) of the Statute; (2) appeals under Article 82 of the Statute which may be suspended upon request pursuant to Article 82 (3) of the Statute. These provisions are not applicable to the present matter.

15. It is an established practice at this Court that preparatory steps to facilitate and expedite the reparations proceedings are launched following a conviction. The issuance of a reparations order is not prejudicial to the rights of the convicted person irrespective of whether there is an appeal against the conviction decision.²¹ The execution of a reparations order on the other hand depends upon a conviction. Therefore, a reparations order can only be implemented once the

²⁰ *Prosecutor v Lubanga*, Judgment on the appeals against the “Decision establishing the principles and procedures to be applied to reparations” of 7 August 2012, 3 March 2015, ICC-01/04-01/06-3129, para. 1.

²¹ In the *Lubanga* case, Trial Chamber I issued its scheduling order on the same day as the conviction decision (Scheduling order concerning timetable for sentencing and reparations, 14 March 2012, ICC-01/04-01/06-2844). Furthermore, it issued its reparations order on 7 August 2012 (Decision establishing the principles and procedures to be applied to reparations, ICC-01/04-01/06-2904), well ahead of the Appeals Chamber rendering its decision on the conviction and sentence on 1 December 2014 (Public redacted Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, ICC-01/04-01/06-3121-Red).

conviction decision itself becomes executable, *i.e.* when it has been confirmed on appeal.²²

16. The reparations proceedings in the present case are, in contrast, at a preliminary stage. All currently envisaged steps in these proceedings, such as the appointment of experts, are of a preparatory nature. Thus, they are not only permissible within the legal framework of the Court but, moreover, logical and necessary steps for the Chamber to take following the Conviction and Sentencing Decisions against Mr Bemba.
17. The Chamber further notes that, in the Court's statutory instruments, the power to order suspensive effect is only given to the Appeals Chamber.²³ However, the Chamber considers that Article 64 (3)(a) of the Statute gives a Trial Chamber the power to suspend the proceedings if this is "necessary to facilitate the fair and expeditious conduct of the proceedings."
18. The Chamber is not persuaded that, in the present circumstances, suspending the proceedings is appropriate. A suspension of the reparations proceedings, including the appointment of experts in preparation for the issue of a reparations order, would in fact negatively impact on the expeditiousness of the reparations proceedings as it would create a substantial delay.
19. The Appeals Chamber in *Lubanga* has recognized that victims should not only receive appropriate and adequate, but also prompt reparations.²⁴ The suspension of all reparations proceedings until after the Appeals Chamber has rendered its decision would substantially impact on the victims' interests to access reparations in a timely manner.

²² *Prosecutor v Lubanga*, Decision on the admissibility of the appeals against Trial Chamber I's "Decision establishing the principles and procedures to be applied to reparations" and directions on the further conduct of proceedings, 14 December 2012, ICC-01/04-01/06-2953, para. 86.

²³ Article 82 (3) of the Statute; Rule 156 (5) of the Rules.

²⁴ *Prosecutor v Lubanga*, Order for Reparations, 3 March 2015, ICC-01/04-01/06-3129-AnxA, para. 44; UN Resolution 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, principles 11 (b), 15.

20. Mr Bemba alleges that the reparations proceedings following the Conviction Decision violate his right to be presumed innocent under Article 66 of the Statute and unfairly burden the Defence's resources. The Chamber fails to see how this provision precludes the advancement of the reparations proceedings, noting that Mr Bemba has already been convicted and sentenced at this point.
21. The Chamber further notes that the Defence fails to demonstrate how the preparation of the reparations proceedings would impact its resources and which deadline it was not able to adhere to.²⁵ It is noted in this regard that both of Mr Bemba's appeals against the conviction and the sentence have already been filed and are awaiting a decision of the Appeals Chamber.
22. The Chamber is mindful that unnecessary costs should be avoided to the greatest possible extent. Nonetheless, the Chamber needs to balance its duty to make use of the Court's resources appropriately, with its obligation to promote efficient and expeditious proceedings, taking into account the ultimate goal of reparations proceedings and victims' rights.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY


REJECTS the Defence's request to suspend the reparations process.

²⁵ *Prosecutor v Gbagbo*, Decision on the « Requête aux fins de suspension des délais prévus par la Règle 154 (1) du Règlement de procédure et de preuve et par la Norme 64 (5) du Règlement de la Cour jusqu'à la fin des vacances judiciaires, fixée au lundi 6 août 2012 », 19 July 2012, ICC-02/11-01/11-189, para. 4; *Prosecutor v Lubanga*, Decision on the application by Counsel for Mr. Thomas Lubanga Dyilo to extend the time limit for the filing of the response to the Prosecutor's document in support of the appeal, 11 July 2006, ICC-01/04-01/06-190, para. 4.

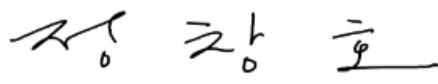
Done in both English and French, the English version being authoritative.



Judge Geoffrey Henderson



Judge Joyce Aluoch



Judge Chang-ho Chung

Dated this 5 May 2017

At The Hague, The Netherlands