



Original: English

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

Date: 2 June 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
with public redacted Annex 1**

**Public redacted version of “Decision appointing experts on reparations”, 2 June
2017**

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr Jean-Jacques Badibanga

Counsel for the Defence

Mr Peter Haynes

Ms Kate Gibson

Legal Representatives of the Victims

Ms Marie-Edith Douzima-Lawson

Legal Representatives of the 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

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Trust Fund for Victims

Mr Pieter de Baan

Others

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Trial Chamber III (“Chamber”) of the International Criminal Court, in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, having regard to Article 75 of the Rome Statute (“Statute”), Rule 97(2) of the Rules of Procedure and Evidence (“Rules”) and Regulation 44 of the Regulations of the Court (“Regulations”), issues the following “Decision appointing experts on reparations”:

I. Procedural background and submissions

1. On 21 February 2017, the Chamber issued an order inviting submissions on experts (“Order”).¹ The Order listed four experts, [REDACTED], [REDACTED], [REDACTED] and [REDACTED], that the Chamber was considering appointing, selected from the Registry’s list of experts.² It set out, on a preliminary basis, the following five issues on which the experts may assist the Chamber: (a) Victims and groups of victims eligible to benefit from reparations, including issues relevant to the “identification of victims”; (b) Types of relevant harm suffered by direct and indirect victims as a result of the crimes for which Mr Bemba was convicted, regardless of whether or not they have participated at trial; (c) Scope of Mr Bemba’s liability for reparations, including the financial or monetary assessment of the harm suffered by the victims under (b); (d) Types and modalities of reparations that would be appropriate to address the harm under (b); (e) Criteria for victims’ prioritization, including sexual violence, child victims, or other appropriate criteria.
2. The Chamber ordered the Legal Representative of Victims (“LRV”), the Office of Public Counsel for Victims (“OPCV”) and the Defence for Mr Jean-Pierre Bemba Gombo (“Defence”) to file joint observations on, and instructions to, the experts listed in the Order, or to file separate observations and instructions if, wholly or in part, an agreement could not be found by 3 March 2017. The Chamber also invited the Office of the Prosecutor (“Prosecution”), the Registry, and the Trust

¹ Order inviting submissions on experts, 21 February 2017, ICC-01/05-01/08-3500-Conf.

² 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.

Fund for Victims (“TFV”) to file observations on the proposed instructions, only by 13 March 2017.³

3. On 3 April 2017, having been granted an extension of time,⁴ the Defence, the LRV and the OPCV filed their observations on the appointment of the experts. The Defence requested the suspension of the reparations proceedings. It further submitted that it had no observations regarding the identity of the experts preferred by the LRV and OPCV, if the Chamber was to decide that the reparations proceedings shall continue, but appended its own draft letter of instruction.⁵ The LRV and OPCV jointly submitted that [REDACTED]’s experience was too theoretical but endorsed the appointment of the other three experts suggested by the Chamber. They also proposed guidelines for the instruction of the experts.⁶
4. On 5 May 2017, the Chamber rejected the Defence’s request to suspend the reparations proceedings.⁷
5. On 22 May 2017, following the provision of updated information by the Registry, the Chamber notified the parties and participants that [REDACTED] and [REDACTED] would not be available to serve as experts in the upcoming months. The Chamber therefore asked the LRV, the OPCV and the Defence to submit observations regarding potential replacement experts, [REDACTED], [REDACTED] and/or [REDACTED], by 24 May 2017.⁸ The Chamber was later

³ Neither the Prosecution, the Registry nor the TVF have filed observations on the proposed instructions.

⁴ On 28 February 2017, the LRV, the OPCV and the Defence jointly filed a formal request for an extension of the deadline to file their submissions proposing a new deadline of 3 April 2017, *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 extension of the deadline as requested. In the same order, the Chamber extended the deadline for the Prosecution, the Registry and the TFV to file observations on the proposed instructions by 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.

⁵ 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.

⁶ Observations et proposition d’instructions des Représentants légaux des victimes suite à l’Ordonnance de la Chambre ICC-01/05-01/08-3500-Conf, 3 April 2017, ICC-01/05-01/08-3512-Conf.

⁷ Decision on the Defence’s request to suspend the reparations proceedings, 5 May 2016, ICC-01/05-01/08-3522.

⁸ Emails from the Legal Advisor of the Trial Division to the parties, 22 May 2017 14:25 and 14:26.

informed by the Registry that [REDACTED] was available to serve as an expert to the present proceedings after all, on a part-time basis.⁹

6. The LRV and OPCV oppose the appointment of [REDACTED], submitting that her experience would be too streamlined. They further object to [REDACTED]'s appointment, arguing that her expertise appears too theoretical at this stage of the procedure. The LRV and OPCV instead propose the appointment of [REDACTED] together with [REDACTED], and provide further alternatives.¹⁰
7. The Defence submits that the availability of the proposed experts should be ascertained first, and that the Registry should be ordered to check the on-going availability of any proposed experts, in order to not waste resources. It further argues that, due to the short deadline imposed by the Chamber, it could not consult Mr Bemba regarding the suitability of the experts. Moreover, it submits that no meaningful submissions on the suitability of the experts could be made pending the uncertain outcome of the appeal. Finally, the Defence opposes the appointment of [REDACTED] due to the fact that he previously worked for the Court, and the appointment of any other person with a similar "conflict of interest".¹¹

II. Analysis

8. Pursuant to Rule 97(2) of the Rules 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. Within this framework, the Chamber has considered the appointment of four experts, [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. The Chamber notes that it may appoint experts without seeking the parties' observations.

⁹ Email from the Registry to the Legal Advisor of the Trial Division, 22 May 2017 14:34.

¹⁰ Email from the LRV/OPCV to the Legal Advisor of the Trial Division, 24 May 2017 12:40, see Annex 1.

¹¹ Defence's Observations on three alternative proposed experts, 24 May 2017, ICC-01/05-01/08-3525-Conf.

9. The Chamber notes that the Defence does not object to the suitability of these experts.¹² As regards the Defence's argument that the appointment of experts would be premature, the Chamber reiterates its position set out in the Decision on the Defence's request to suspend the reparations proceedings.¹³
10. The Chamber is not persuaded by the LRV's and OPCV's objections to [REDACTED]'s and [REDACTED]'s appointments, respectively.¹⁴ [REDACTED] has 15 years of relevant practical experience in reparations-related mass class actions, as well as in domestic litigation of victims' claims in a number of countries, *e.g.* Kenya. His expertise is therefore not limited to theoretical knowledge, as suggested by the LRV and OPCV. The objection that [REDACTED]'s expertise is too streamlined is not convincing. While her work may have largely focussed on Holocaust survivors, she possesses 40 years of overall experience in the field of traumatised war crimes, is experienced in assessing reparations and has previously been a consultant to the ICTY and ICC on issues related to victims. The Chamber therefore considers her well-suited for assessing the matters at hand.
11. In the absence of any compelling reasons, and mindful of the necessity to ensure the production of the most complete information on all the areas identified,¹⁵ the Chamber thus appoints [REDACTED], [REDACTED], [REDACTED] and [REDACTED] ("Appointed experts").
12. The Appointed experts shall provide their report(s) on the five issues set out in the Order. The Chamber further notes that the LRV, the OPCV and the Defence identified specific detailed questions which fall within the five issues listed by the

¹² 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, para.1; Defence's Observations on three alternative proposed experts, 24 May 2017, ICC-01/05-01/08-3525-Conf.

¹³ Decision on the Defence's request to suspend the reparations proceedings, 5 May 2016, ICC-01/05-01/08-3522.

¹⁴ Observations et proposition d'instructions des Représentants légaux des victimes suite à l'Ordonnance de la Chambre ICC-01/05-01/08-3500-Conf, 3 April 2017, ICC-01/05-01/08-3512-Conf, para.8; Email from the LRV/OPCV to the Legal Advisor of the Trial Division, 24 May 2017 12:40, see Annex 1.

¹⁵ Order inviting submissions on experts, 21 February 2017, ICC-01/05-01/08-3500-Conf, para.5.

Chamber. It invites the Appointed experts, to the extent feasible and necessary, to include information on these questions in their report(s).

13. The Registry shall facilitate the communication among the Appointed experts and shall provide them with all the reasonable logistical assistance required to complete their report(s) in due time, including their access to the case record, *i.e.* filings, evidence or transcripts relied upon in the Judgment, in the version available to the Defence. In this context, the Chamber notes that the case record contains comprehensive information relevant to the 5,229 victims participating in the proceedings, including the circumstances of their victimisation, the harm they suffered and documents provided in support of their application to participate in the proceedings.¹⁶
14. The Appointed experts may submit joint or separate report(s), as they see fit. They must submit their report(s), separately or jointly, to the Chamber and the parties by **15 September 2017**.
15. By **15 September 2017**, the LRV, the OPCV and the Defence must also provide, in formal filings, any additional information they wish to be considered in the reparations order.
16. The LRV, the OPCV, the Defence and the TFV may file submissions of up to 50 pages on the expert report(s), the submissions of other participants and any other last arguments they wish for the Chamber to consider before rendering its reparations order, by **16 October 2017**.

¹⁶ See Order requesting submissions relevant to reparations, 22 July 2016, ICC-01/05-01/08-3410, para.6; Order inviting submissions on experts, 21 February 2016, ICC-01/05-01/08-3500-Conf, para.5.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

APPOINTS [REDACTED], [REDACTED], [REDACTED] and [REDACTED] as experts for the reparations proceedings,


SETS the deadline for the submission of the expert report(s) as **15 September 2017**,

SETS the LRV's, the OPCV's and the Defence's deadline for submitting any additional information they wish to be considered in the reparations order as **15 September 2017**,

SETS the deadline for the LRV's, the OPCV's, the Defence's and the TFV's submissions on the expert report(s), the submissions of other participants and any other last arguments they wish for the Chamber to consider before rendering its reparations order, as **16 October 2017**, and

ORDERS the Defence to file a public redacted version of its observations, ICC-01/05-01/08-3525-Conf.

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

 <hr/> Judge Geoffrey Henderson	 <hr/> Judge Joyce Aluoch	 <hr/> Judge Chang-ho Chung
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Dated this 2 June 2017

At The Hague, The Netherlands