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Date: 29 August 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

Second decision on applications for resumption of actions initiated by deceased victims

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Jean-Jacques Badibanga

Counsel for the Defence

Mr Peter Haynes QC
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**

Mr Xavier-Jean Keita

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Trust Fund for Victims

Trial Chamber III (“Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, issues the following “Second decision on applications for resumption of actions initiated by deceased victims”:

I. Procedural background

1. On 24 March 2016, the Chamber adopted a system for family members or individuals closely connected with deceased victims to resume the actions initiated by these deceased persons before the Court (“First Resumption Decision”).¹
2. In accordance with that system, the Registry transmitted to the Chamber on 5 August 2016,² 22 December 2016,³ and 7 August 2017,⁴ 33 applications forms for resumption of actions initiated by deceased victims with supporting documentation (“Resumption Applications”),⁵ together with three reports containing the Registry’s assessment of the Resumption Applications (“Registry Reports”).⁶

II. Applicable law

3. The Chamber recalls that, pursuant to the system adopted in the First Resumption Decision, the Registry is to assess the Resumption Applications in accordance with criteria set by the Chamber in that Decision and, where it considers that the applicable criteria are met, transmit the documentation to the Chamber.⁷ Barring ‘clear and material error’, the Chamber will approve the

¹ Decision on “Requête relative à la reprise des actions introduites devant la Cour par des victimes décédées”, ICC-01/05-01/08-3346.

² Transmission of applications for resumption of actions initiated by deceased victims, with three confidential *ex parte* annexes, ICC-01/05-01/08-3419 (notified on 8 August 2016).

³ Transmission of applications for resumption of actions initiated by deceased victims, with three confidential *ex parte* annexes, ICC-01/05-01/08-3488.

⁴ Transmission of applications for resumption of actions initiated by deceased victims, with 30 confidential *ex parte* annexes, ICC-01/05-01/08-3553.

⁵ Confidential *ex parte* annexes 2-3 of ICC-01/05-01/08-3419; confidential *ex parte* annexes 2-3 of ICC-01/05-01/08-3488; and confidential *ex parte* annexes 2-30 of ICC-01/05-01/08-3553.

⁶ Registry’s Report on the Resumption Applications, ICC-01/05-01/08-3419-Conf-Exp-Anx1; Registry’s Report on the Resumption Applications, ICC-01/05-01/08-3488-Conf-Exp-Anx1; and Registry’s Report on the Applications for Resumption of Action, ICC-01/05-01/08-3553-Conf-Exp-Anx1.

⁷ ICC-01/05-01/08-3346, para. 49(ii)(a).

Registry's assessment and authorise the applicants to resume the actions initiated by the deceased victims.⁸

4. The Chamber recalls the applicable criteria set in the First Resumption Decision, namely that the applicant must provide evidence of (i) the death of the victim who had been authorised to participate in the proceedings; (ii) the family link or other close connection between the applicant and the deceased victim; and (iii) a mandate authorising the applicant to continue the actions on behalf of the deceased victim.⁹ The Chamber also recalls its previous findings that the second and third criteria can be satisfied by the provision of a relevant *procès-verbal* of the *Conseil de famille*, as approved by a *jugement d'homologation*.¹⁰

III. Analysis

5. The first criterion has been satisfied for all 33 Resumption Applications. In relation to the second and third criteria, the Chamber notes that for 18 of the Resumption Applications, no *jugement d'homologation* has been provided.¹¹ For 10 of those 18 applications,¹² additional documentation has been provided in satisfaction of the second criterion, but not the third. For the other eight of those 18 applications,¹³ no additional documentation has been provided in satisfaction of either the second or third criteria.

⁸ ICC-01/05-01/08-3346, para. 49(iii).

⁹ ICC-01/05-01/08-3346, para. 23.

¹⁰ ICC-01/05-01/08-3346, paras 31-32.

¹¹ ICC-01/05-01/08-3553-Conf-Exp-Anx2; ICC-01/05-01/08-3553-Conf-Exp-Anx3; ICC-01/05-01/08-3553-Conf-Exp-Anx4; ICC-01/05-01/08-3553-Conf-Exp-Anx6; ICC-01/05-01/08-3553-Conf-Exp-Anx7; ICC-01/05-01/08-3553-Conf-Exp-Anx11; ICC-01/05-01/08-3553-Conf-Exp-Anx12; ICC-01/05-01/08-3553-Conf-Exp-Anx13; ICC-01/05-01/08-3553-Conf-Exp-Anx14; ICC-01/05-01/08-3553-Conf-Exp-Anx15; ICC-01/05-01/08-3553-Conf-Exp-Anx18; ICC-01/05-01/08-3553-Conf-Exp-Anx19; ICC-01/05-01/08-3553-Conf-Exp-Anx21; ICC-01/05-01/08-3553-Conf-Exp-Anx23; ICC-01/05-01/08-3553-Conf-Exp-Anx24; ICC-01/05-01/08-3553-Conf-Exp-Anx26; ICC-01/05-01/08-3553-Conf-Exp-Anx27; and ICC-01/05-01/08-3553-Conf-Exp-Anx29. In relation to ICC-01/05-01/08-3553-Conf-Exp-Anx12, a *certificat de non-appel* against a *jugement d'homologation* has been provided, which refers to a *jugement d'homologation*, but the *jugement d'homologation* itself has not been provided.

¹² ICC-01/05-01/08-3553-Conf-Exp-Anx6; ICC-01/05-01/08-3553-Conf-Exp-Anx11; ICC-01/05-01/08-3553-Conf-Exp-Anx12; ICC-01/05-01/08-3553-Conf-Exp-Anx14; ICC-01/05-01/08-3553-Conf-Exp-Anx15; ICC-01/05-01/08-3553-Conf-Exp-Anx18; ICC-01/05-01/08-3553-Conf-Exp-Anx21; ICC-01/05-01/08-3553-Conf-Exp-Anx23; ICC-01/05-01/08-3553-Conf-Exp-Anx24; and ICC-01/05-01/08-3553-Conf-Exp-Anx29.

¹³ ICC-01/05-01/08-3553-Conf-Exp-Anx2; ICC-01/05-01/08-3553-Conf-Exp-Anx3; ICC-01/05-01/08-3553-Conf-Exp-Anx4; ICC-01/05-01/08-3553-Conf-Exp-Anx7; ICC-01/05-01/08-3553-Conf-Exp-Anx13; ICC-

6. The Chamber is fully mindful of the practical difficulties faced by applicants in providing documentary evidence in support of their applications, including official records. It notes in this respect the Registry's submission that the current situation in the Central African Republic presents practical challenges for victims to obtain a *jugement d'homologation*, as there are a limited number of administrative and judicial institutions providing such documents and the judicial/administrative process can be costly and complex.¹⁴ It also notes, as stated by the Registry,¹⁵ that each of the *procès-verbeaux* for the 18 abovementioned Resumption Applications appear to have been certified by a local authority, or at least witnessed. Having regard to these factors, the Chamber does not consider the lack of *jugement d'homologation* to be fatal to those 18 Resumption Applications and accordingly does not find the Registry's assessment of these applications to be in error.
7. The Chamber has, in addition, identified some other errors in the Registry Reports¹⁶ and in the Resumption Applications themselves.¹⁷ However, having regard to the nature of the errors and the totality of the documentation provided for each of those Resumption Applications, none of these errors is considered by the Chamber to be material.

01/05-01/08-3553-Conf-Exp-Anx19; ICC-01/05-01/08-3553-Conf-Exp-Anx26; and ICC-01/05-01/08-3553-Conf-Exp-Anx27.

¹⁴ ICC-01/05-01/08-3553, para. 5.

¹⁵ ICC-01/05-01/08-3553, para. 6.

¹⁶ In Registry Report ICC-01/05-01/08-3488-Conf-Exp-Anx1, the Chamber notes that there appears to be some incorrect document references in the second row, second and third columns. In Registry Report ICC-01/05-01/08-3553-Conf-Exp-Anx1, the deceased victim's death certificate is referred to for several of the applications as an "identity and kinship" document. It is, however, not clear to the Chamber how the death certificate itself provides evidence of the applicant's identity or their relationship to the deceased victim. In Registry Report ICC-01/05-01/08-3553-Conf-Exp-Anx1, the Registry identifies a *jugement de curatelle* as providing evidence of the applicant's mandate in respect of Resumption Application ICC-01/05-01/08-3553-Conf-Exp-Anx6. It is, however, not clear to the Chamber why this document provides such evidence.

¹⁷ In Resumption Application ICC-01/05-01/08-3419-Conf-Exp-Anx2, pages 2 and 4, the Chamber notes that the date of death noted in the resumption of application form differs by a few days from that noted in the death certificate. In Resumption Applications ICC-01/05-01/08-3553-Conf-Exp-Anx2, pages 9-11, ICC-01/05-01/08-3553-Conf-Exp-Anx8, pages 19-21, and ICC-01/05-01/08-3553-Conf-Exp-Anx9, pages 10-14, the Chamber notes that there are slight variations in the spelling of the applicant and/or deceased victims' surnames across the application form and various supporting documents. In Resumption Applications ICC-01/05-01/08-3553-Conf-Exp-Anx11, page 11, ICC-01/05-01/08-3553-Conf-Exp-Anx19, page 15, and ICC-01/05-01/08-3553-Conf-Exp-Anx21, page 29, the Chamber notes that there appears to be transcription errors in relation to the dates of death in the *procès-verbal* of the *Conseil de famille*.

8. Accordingly, the Chamber considers it appropriate to authorise the applicants nominated in the 33 Resumption Applications to resume the actions initiated by the deceased victims before the Court. In this regard, the Chamber recalls that persons who resume the actions initiated by the deceased victims are only authorised to do so within the limits of the views and concerns expressed by the victim in his or her initial application.¹⁸

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

AUTHORISES the applicants to resume the actions initiated before the Court by the respective deceased victims a/1838/10; a/1401/11; a/1442/10; a/2449/10;¹⁹ a/16452/11; a/16463/11; a/16447/11; a/1727/11; a/1734/11; a/16493/11; a/2205/10; a/16653/11; a/17231/11; a/3211/10; a/3185/10; a/16649/11; a/0019/11; a/1525/11; a/1520/11; a/0483/11; a/16513/11; a/16517/11;²⁰ a/1502/11; a/2167/10; a/16489/11; a/16521/11; a/16583/11; a/3180/10; a/16518/11; a/2308/10; a/16505/11; a/16484/11; and a/2181/10;

ORDERS the Registry to consult with the Legal Representative of the Victims and file confidential redacted versions of the Registry Reports and the Resumption Applications, in accordance with the First Resumption Decision; and

ORDERS the Victims Participation and Reparations Section to consult with the Legal Representative of the Victims and, where the applicant has consented to the communication of the deceased victim's identity to the parties before submitting their application for resumption, file lesser redacted versions of the original application forms of the deceased victims, in accordance with paragraph 41 of the First Resumption Decision.

¹⁸ ICC-01/05-01/08-3346, para. 22.

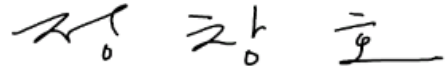
¹⁹ The Registry has noted that an application for reparations for this victim has also been transmitted under the number a/0789/10.

²⁰ The Chamber notes that for the Resumption Application for this victim (ICC-01/05-01/08-3553-Conf-Exp-Anx19), the deceased person is not the victim themselves, but rather the person who was acting on behalf of an already deceased victim.

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



Judge Geoffrey Henderson

Judge Joyce Aluoch

Judge Chang-ho Chung

Dated this 29 August 2017

At The Hague, The Netherlands