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

Date: 08/11/2017

**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*

**Defence's further request for a revision of the timetable for the filing of  
documents**

**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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**REGISTRY**

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## A. INTRODUCTION

1. By this motion the Defence requests a revision of the timetable for the filing of documents in the reparations proceedings by the parties herein.

## B. PROCEDURAL HISTORY

2. On 2 June 2017, the Chamber appointed four experts to assist in the reparations proceedings, and ordered them to submit their report(s) by 15 September 2017.<sup>1</sup> The Chamber also ordered the Legal Representative of the Victims (“LRV”), the Office of Public Counsel for Victims (“OPCV”) and the Defence to submit any additional information they wish to be considered in the reparations order by 15 September 2017, and ordered the LRV, the OPCV, the Defence and the Trust Fund for Victims (“TFV”) to file submissions on the expert report(s), the submissions of other participants and any other last arguments, by 16 October 2017.<sup>2</sup>

3. On 11 August 2017, the Appointed Experts transmitted to the Registry a request for an extension of time until 20 November 2017 to submit their joint report.<sup>3</sup> On 15 August 2017, the Registry transmitted the Request to the Chamber.<sup>4</sup>

4. On 30 August 2017, the Chamber granted the Experts’ request for extension on time and ordered to submit their joint report to the Chamber on 20 November 2017. The LRV, the Defence and the OPCV were also permitted to file any additional information they wish to be considered in the reparations order on 20 November 2017.<sup>5</sup>

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<sup>1</sup> ICC-01/05-01/08-3532-Red.

<sup>2</sup> ICC-01/05-01/08-3532-Red, paras. 15-16.

<sup>3</sup> ICC-01/05-01/08-3554-Conf-Anx

<sup>4</sup> ICC-01/05-01/08-3554.

<sup>5</sup> ICC-01/05-01/08-3559-Red.

5. On 30 October 2017, the Appeals Chamber in the case of *Prosecutor –v- Jean-Pierre Bemba-Gombo* ordered the appellant (the defendant herein) to file further submissions on the issue of the contextual elements of crimes against humanity by 13 November 2017.<sup>6</sup> The issue is plainly pivotal to the determination of the appeal, and involves considerable factual and legal research and analysis.

6. On 1 November 2017, the Defence filed a request for extension of time to file additional observations for reparations.<sup>7</sup> On 3 November 2017, Counsel for OPCV and LRV sent a joint email to the Chamber indicating they did not oppose the Defence's request.<sup>8</sup>

7. On 7 November 2017, The Appeals Chamber issued a scheduling order for the hearing of oral arguments. It has set aside 5 days of hearings for the appeal between 9 and 16 January 2018. Further directions on the schedule of the hearing and the conduct of proceedings are to follow in due course.<sup>9</sup>

8. On 8 November 2017 The Trial Chamber partially allowed the Defence application for an extension of time for the filing of additional information on reparations by amending the deadline to 27 November 2017. The same deadline was applied to the LRV and OPCV.<sup>10</sup> The Trial Chamber amended the deadline having found "the Appeals Deadline to amount to good cause for extending the Additional Information Deadline for the Defence, considering the proximity of the two deadlines, the potentially substantial nature of the two filings, and the reduced resources of the Defence".<sup>11</sup>

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<sup>6</sup> ICC-01/05-01/08-3564.

<sup>7</sup> ICC-01/05-01/08-3565.

<sup>8</sup> Email from Counsel from OPCV and LRV to the Chamber and parties sent on 03 November 2017 at 10:48.

<sup>9</sup> ICC-01/05-01/08-3568.

<sup>10</sup> ICC-01/05-01/08-3569.

<sup>11</sup> ICC-01/05-01/08-3569, para. 7.

## C. SUBMISSIONS

9. According to the current schedules, the Defence will have to file responses to the Appeals Chambers questions as to the contextual elements of crime on 13 November.<sup>12</sup> On 20 November the report of the experts' on reparations is due to be served on the parties herein.<sup>13</sup> On 27 November (together with the LRV) the Defence has to file further information on reparations.<sup>14</sup> On the same day, the prosecution's responses to the Appeals Chambers questions will be served.<sup>15</sup> On 4 December, the LRV will have to file observations on the Appeals Chambers questions.<sup>16</sup> On 11 December, the Defence will have to reply to the LRV's observations on the Appeals Chambers' questions.<sup>17</sup>

10. The Court's recess commences on 15 December.<sup>18</sup> On 18 December the Defence (and the LRV) will have to file responses to the experts' report on reparations.<sup>19</sup> The recess ends on 5 January 2018. On 9 January 2018 the Defence (and the LRV) will commence a 5 day appeal hearing.<sup>20</sup>

11. The Appeals Chamber's (unexpected) scheduling order further complicates the already congested briefing schedule outlined above. A 5 day appeal hearing in a single accused case is almost unprecedented in international criminal law. The parties and participants can rightly anticipate that the "further directions on the ...conduct of proceedings"<sup>21</sup> will entail compendious questions from the Appeals Chamber. Necessarily, this will involve an enormous amount of preparation.

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<sup>12</sup> ICC-01/05-01/08-3564, p. 3.

<sup>13</sup> ICC-01/05-01/08-3559-Red, para. 8 (i).

<sup>14</sup> ICC-01/05-01/08-3569, p. 5.

<sup>15</sup> ICC-01/05-01/08-3564, p. 3.

<sup>16</sup> ICC-01/05-01/08-3564, p. 3.

<sup>17</sup> ICC-01/05-01/08-3564, p. 3.

<sup>18</sup> <https://www.icc-cpi.int/visit>.

<sup>19</sup> ICC-01/05-01/08-3559-Red, para. 8 (iii).

<sup>20</sup> ICC-01/05-01/08-3568.

<sup>21</sup> ICC-01/05-01/08-3568, p. 3.

12. Many of the submissions already accepted by the Chamber as justifying a short delay to the filing of the further information on reparations apply *a fortiori* to the more recent scheduling order for a 5 day hearing immediately following the winter recess.

13. Whilst it is not the Defence's intention to submit that the reparations process is in any way subservient to the case on appeal, the Chamber herein has shown recurrent flexibility to many of the parties herein by amending the timetable to suit the convenience of, for example, the Registry or the experts.<sup>22</sup>

14. The current schedule will place an intolerable burden upon the Defence's resources at crucial times in both sets of proceedings. The same is almost certainly true of the LRV as well. In the circumstances there is good cause for further amendment to the deadlines herein.

#### **D. RELIEF SOUGHT**

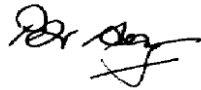
15. The Defence seeks further amendment to the timetable to allow:

1. The Defence to file its further information on reparations by 23 January 2018;
2. The Defence to file any response to the experts' report on reparations by 20 February 2018; and
3. Any other ancillary amendments to the timetable for filing documents by the parties herein.

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<sup>22</sup> See, for example, ICC-01/05-01/08-3559-Red.

The whole respectfully submitted.

A handwritten signature in black ink, appearing to read 'Peter Haynes', with a stylized flourish at the end.

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

Done at The Hague, The Netherlands, 8 November 2017