



Original: **English**

No.: ICC-01/05-01/08
Date: 22 December 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

Public redacted version of "Order regarding follow-up matters arising from Expert Report ICC-01/05-01/08-3575-Anx-Corr2-Red"

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**

Mr Xavier-Jean Keita

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

Experts

[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”), Rules 97(2) and 103 of the Rules of Procedure and Evidence (“Rules”) and Regulation 44 of the Regulations of the Court (“Regulations”), issues the following “Order regarding follow-up matters arising from Expert Report ICC-01/05-01/08-3575-Anx-Corr2-Red”:

I. Procedural background

1. On 26 August 2016, following an invitation by the Chamber¹ and the submission of applications (“Applications”),² the Chamber granted four organisations leave to make submissions on certain issues relating to reparations, pursuant to Article 75(3) of the Statute and Rule 103 of the Rules.³ These were the Queen’s University Belfast Human Rights Centre (“QUB”), the Redress Trust, the United Nations (“UN”) and the International Organization for Migration (“IOM”) (together, “Rule 103 Organisations”). The Rule 103 Organisations filed their respective submissions on 17 October 2016 (“Submissions”).⁴
2. On 2 June 2017, the Chamber appointed four experts to assist in the reparations proceedings (“Experts”) and instructed them to file a joint or separate report(s) addressing, *inter alia*, the following five issues: (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

¹ Order requesting submissions relevant to reparations, 22 July 2016, ICC-01/05-01/08-3410, p. 6.

² QUB: Request for leave to file submission on reparations issues pursuant to Article 75 of the Statute, 8 August 2016, ICC-01/05-01/08-3420; Redress Trust: Application by the Redress Trust for leave to submit observations pursuant to Article 75(3) of the Statute and Rule 103 of the Rules, 10 August 2016, ICC-01/05-01/08-3421; the UN: Application by the United Nations for leave to make submissions pursuant to Article 75 of the Statute and Rule 103 of the Rules of Procedure and Evidence, 16 August 2016, ICC-01/05-01/08-3422; IOM: Annex 1 to the Registry’s implementation of Decision ICC-01/05-01/08-3410, 16 August 2016, ICC-01/05-01/08-3425-Conf-AnxI.

³ Decision on requests to make submissions pursuant to article 75(3) of the Statute and rule 103 of the Rules of Procedure and Evidence, ICC-01/05-01/08-3430.

⁴ QUB: Submission by QUB Human Rights Centre on reparations issues pursuant to Article 75 of the Statute, 17 October 2016, ICC-01/05-01/08-3444; Redress Trust: Observations by the Redress Trust pursuant to Article 75(3) of the Statute and Rule 103 of the Rules, 17 October 2016, ICC-01/05-01/08-3448; the UN: Joint submission by the United Nations containing observations on Reparations pursuant to Rule 103 of the Rules of Procedure and Evidence, 17 October 2016, ICC-01/05-01/08-3449; IOM: Submission by the International Organization for Migration to the International Criminal Court pursuant to article 75(3) of the statute: on the issues proposed by Trial Chamber III on the 12th August 2016, 17 October 2016, ICC-01/05-01/08-3447.

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.⁵

3. On 20 November 2017, after the Experts were granted an extension of time,⁶ the Registry filed the Experts' joint report ("Expert Report"), in a version available to the Chamber only.⁷
4. Pursuant to the current timetable in the reparations proceedings, as modified by the Chamber, responses to the Expert Report from the Legal Representative of the Victims ("LRV"), the Office of Public Counsel for Victims ("OPCV), the Defence for Mr Bemba ("Defence") and the Trust Fund for Victims ("TFV") are due, as part of final submissions, on 31 January 2018.⁸

II. Analysis

5. This order sets out a number of follow-up matters relating to the Expert Report.

⁵ Decision appointing experts on reparations, ICC-01/05-01/08-3532-Conf, paras 1, 12, 14. See also, Judgment on the appeals against the 'Decision establishing the principles and procedures to be applied to reparations' of 7 August 2012", Appeals Chamber, 3 March 2015, ICC-01/04-01/06-3129, which identifies five constitutive elements which must be contained in an order for reparations.

⁶ Decision on the request from the reparations experts for an extension of time for the submission of their joint report, 30 August 2017, ICC-01/05-01/08-3559-Conf.

⁷ Annex to the Transmission of Experts' Joint Report pursuant to Trial Chamber Decision ICC-01/05-01/08-3559-Red of 30 August 2017, ICC-01/05-01/08-3575-Conf-Exp-Anx. A second corrigendum to this version of the report was filed on 28 November 2017: ICC-01/05-01/08-3575-Conf-Exp-Anx-Corr2. A confidential redacted version of the report available to the Legal Representative of the Victims, the Office of Public Counsel for Victims, the Defence for Mr Bemba and the Trust Fund for Victims was filed on 21 November 2017: ICC-01/05-01/08-3575-Conf-Anx-Red. A corrigendum to this version of the report was filed on 28 November 2017: ICC-01/05-01/08-3575-Conf-Anx-Red-Corr. A public redacted version of the report was filed on 30 November 2017: ICC-01/05-01/08-3575-Anx-Corr2-Red.

⁸ See Decision on the Defence's further request for a revision of the timetable for the filing of documents, 22 November 2017, ICC-01/05-01/08-3576, para. 11; Decision on the Legal Representative of the Victims request for extension of time, 14 December 2017, ICC-01/05-01/08-3587, paras 12-13.

Scope of liability

6. The Chamber recalls that it instructed the Experts to address in their report, *inter alia*, the scope of Mr Bemba's liability for reparations, including the financial or monetary assessment of the harm suffered by the victims.⁹ In the Expert Report, the Experts have made recommendations regarding in what *proportion* they believe Mr Bemba should be liable for the total harm suffered by the victims,¹⁰ however they have not provided a total financial or monetary quantification of the scope of Mr Bemba's liability. In this respect, the Experts state that "[w]hile they have recommended a standard compensation amount (SCA) for each eligible victim, [they] are not in a position to assign a monetary value to each type of harm and each form of reparation they have recommended. Consequently, they have not put forward an amount for the sum-total of the harms caused by Mr. Bemba and of the corresponding reparations; this will only be known when the Chamber has decided which forms of reparation shall be awarded and when their monetary value has been calculated".¹¹
7. Notwithstanding this statement, the Chamber notes that in the Expert Report, the Experts have (i) identified the types of victims they recommend be eligible to benefit from reparations,¹² (ii) conducted a detailed assessment of the types and forms of harms suffered by the victims,¹³ (iii) recommended specific forms of reparations (namely, a combination of both individual and collective reparations) and have provided detailed recommendations as to the *modalities* for each type of recommendation,¹⁴ and (iv) proposed bases for calculating the monetary value of both the individual¹⁵ and the collective reparations.¹⁶

⁹ ICC-01/05-01/08-3532-Conf, paras 1, 12.

¹⁰ Expert Report, ICC-01/05-01/08-3575-Anx-Corr2-Red, paras 212-256.

¹¹ Expert Report, ICC-01/05-01/08-3575-Anx-Corr2-Red, para. 212.

¹² Expert Report, ICC-01/05-01/08-3575-Anx-Corr2-Red, paras 16-51.

¹³ Expert Report, ICC-01/05-01/08-3575-Anx-Corr2-Red, paras 68-133.

¹⁴ Expert Report, ICC-01/05-01/08-3575-Anx-Corr2-Red, paras 156-211.

¹⁵ Expert Report, ICC-01/05-01/08-3575-Anx-Corr2-Red, paras 186-203.

¹⁶ Expert Report, ICC-01/05-01/08-3575-Anx-Corr2-Red, para. 206.

8. Without yet expressing any view on any of the matters contained in the Expert Report, the Chamber considers that the Experts need not wait for the Chamber to decide which forms of reparation will be ordered, but, having regard to factors (i) to (iv) mentioned above, the Experts could calculate the scope of Mr Bemba's liability, or a range thereof, based on the forms of reparations they themselves recommend, and taking into consideration that the victims eligible for reparations may extend beyond those who participated at trial or have participation and/or reparation applications presently pending. The Chamber considers that it would be assisted by such input from the Experts in formulating its order for reparations.
9. Therefore, the Chamber directs the Experts to file an addendum to the Expert Report, in which they calculate the scope of Mr Bemba's liability, including putting forward an amount for the sum-total of the harms caused by Mr Bemba and of the corresponding recommended reparations, or a range thereof. The Experts may file the addendum jointly or may file separate addenda, as they see fit.
10. The Registry shall provide the Experts with all the reasonable logistical assistance required to complete their addendum in due time, including, where necessary and to the extent possible, assistance in procuring additional information required by them to calculate the monetary value of both the individual and the collective reparations recommended by them (such as information on the average cost of particular services in the Central African Republic ("CAR")). Should the Experts rely on any such information, they are required to clearly identify it in the addendum and indicate its source.

Feasibility of types and modalities of reparations recommended in the Expert Report

11. The Chamber considers that one important consideration in determining the appropriate types and modalities of reparations in this case is the feasibility of their implementation. Although noting the comments made by the Experts in this

regard,¹⁷ the Chamber considers that it would be assisted by additional [REDACTED] information on the feasibility of implementing the types and modalities of reparations put forward in the Expert Report, and any other relevant information, having specific regard to the present contextual situation in the CAR (including, *inter alia*, relevant political, economic, and security factors).

12. The Chamber recalls that responses to the Expert Report from the LRV, the OPCV, the Defence and the TFV are due on 31 January 2018 and notes that these submissions may very well address the abovementioned issue. Nevertheless, the Chamber considers that it could be additionally assisted in this regard by the Registry and the Rule 103 Organisations.
13. As regards the Registry, the Chamber directs it to provide an update on the security situation in the CAR, based on currently available information, highlighting in particular any matters considered relevant to the feasibility of implementing the types and modalities of reparations put forward in the Expert Report.
14. As regards the Rule 103 Organisations, the Chamber has considered the expertise of each Organisation based on the content of their respective Applications and Submissions. It considers that of the four, [REDACTED] appears best placed to provide assistance on this issue, having regard to factors including [REDACTED],¹⁸ [REDACTED],¹⁹ [REDACTED].²⁰
15. Rule 103 of the Rules provides that “[a]t any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate”.

¹⁷ See for example Expert Report, ICC-01/05-01/08-3575-Anx-Corr2-Red, paras 145-151.

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED].

Responses

16. The LRV, the OPCV, the Defence and the TFV may each file a response to any (i) addendum or addenda filed by the Experts and (ii) observations of [REDACTED].

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DIRECTS the Experts to file, by **31 January 2018** either jointly or separately, an addendum to the Expert Report, as set out in paragraphs 8 to 10;

DIRECTS the Registry to provide:

- i. the assistance referred to in paragraph 10; and
- ii. by **31 January 2018**, an update on the security situation in the CAR, as referred to in paragraph 13;


INVITES [REDACTED] to file, by **31 January 2018**, observations on the feasibility of implementing the types and modalities of reparations, as referred to in paragraph 11; and

INVITES the LRV, the OPCV, the Defence and the TFV to each file a response, by **8 February 2018**, to any (i) addendum or addenda of the Experts and (ii) observations of [REDACTED], filed in accordance with this order.

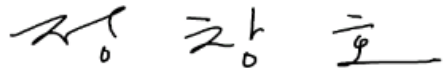
Done in both English and French, the English version being authoritative.



Judge Geoffrey Henderson



Judge Joyce Aluoch



Judge Chang-ho Chung

Dated this 22 December 2017

At The Hague, The Netherlands