

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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No.: ICC-02/05-01/08  
Date: 22 January 2018

**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**

**Joint Response to the Defence Request for a further extension of time to file its  
Final Consolidated Submissions on reparations**

**Source:** Legal Representative of Victims  
Office of Public Counsel for Victims

**Document 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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## **REGISTRY**

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Mr Herman von Hebel

**Counsel Support Section**

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**Detention Section**

**Victims Participation and Reparations  
Section**

**Trust Fund for Victims**

## I. Introduction

1. The Legal Representative of the Victims admitted to participate in the proceedings and the Principal Counsel of the Office of Public Counsel for Victims (jointly referred to as the “Legal Representatives”) request the Chamber to reject the renewed request filed by the Defence to delay its Final Consolidated Submissions on reparations until there is a final conviction. The arguments submitted by the Defence were previously rejected by the Chamber twice and amount to an attempt to re-litigate the same issue absent any new element justifying it. In fact, the Defence Request on this issue simply shows its disagreement with previous rulings of the Chamber.

2. The Legal Representatives, however, support the request by the Defence for an extension of time to file Final Consolidated Submissions on reparations. The Legal Representatives agree that, at this stage, competing deadlines are indeed in place. Furthermore, the Legal Representatives are in favour of submitting their pending respective submissions on reparations in a consolidated manner, addressing simultaneously their response to the Experts’ Report and any additional information to be filed by 31 January 2018. Accordingly, an extension of time until 28 February 2018 is supported.

## II. Procedural Background

3. On 31 October 2016, the Prosecution,<sup>1</sup> the Trust Fund for Victims (the “TFV”),<sup>2</sup> the Defence,<sup>3</sup> the Legal Representative of the Victims (the “LRV”)<sup>4</sup> and the Office of

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<sup>1</sup> See the “Prosecution’s Observations on Reparations”, No. ICC-01/05-01/08-3454, 31 October 2016.

<sup>2</sup> See the “Observations relevant to reparations”, No. ICC-01/05-01/08-3457, 31 October 2016.

<sup>3</sup> See the “Public redacted version of Defence observations on reparations”, No. ICC-01/05-01/08-3458-Red, 1 November 2016.

<sup>4</sup> See the “Version publique expurgée des observations de la Représentante légale des victimes relativement aux réparations”, No. ICC-01/05-01/08-3459-Red, 25 November 2016.

Public Counsel for Victims (the “OPCV”)<sup>5</sup> submitted their respective observations on reparations, as requested by the Chamber in its Order dated 22 July 2016<sup>6</sup>.

4. On 2 June 2017, Trial Chamber III (the “Chamber”) appointed four Experts to assist in the reparations proceedings and instructed them to file their report(s) by 15 September 2017 (the “Experts’ Report”).<sup>7</sup> The Chamber also set the deadlines for the parties and the TFV to file observations on the Experts’ Report(s).<sup>8</sup>

5. On 30 August 2017, the Chamber extended the deadline for the filing of the Experts’ Report until 20 November 2017 and amended the original deadline for the observations thereto.<sup>9</sup>

6. On 30 October 2017, the Appeals Chamber issued an order in the appeal of Mr Bemba against his conviction, requiring the Prosecution, the Defence and the LRV to file further submissions on issues related to the ground of appeal on the contextual elements of crimes against humanity by 13 November 2017.<sup>10</sup>

7. On 1 November 2017, the Defence filed a request seeking an extension of the deadline to file Additional Submissions in the reparations proceedings until 4 December 2017.<sup>11</sup> On 3 November 2017, the Legal Representatives jointly informed the Chamber by email that they did not oppose the extension request, asking that any

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<sup>5</sup> See the “Submissions relevant to reparations”, No. ICC-01/05-01/08-3455, 31 October 2016.

<sup>6</sup> See the “Order requesting submissions relevant to reparations” (Trial Chamber III), No. ICC-01/05-01/08-3410, 22 July 2016, para. 7.

<sup>7</sup> See the “Decision appointing experts on reparations” (Trial Chamber III), No. ICC-01/05-01/08-3532-Red, 2 June 2017.

<sup>8</sup> *Idem*, para. 15-16.

<sup>9</sup> See the “Decision on the request from the reparations experts for an extension of time for the submission of their joint report” (Trial Chamber III), No. ICC-01/05-01/08-3559-Conf, para. 8.

<sup>10</sup> See the “Order for submissions on the contextual elements of crimes against humanity” (Appeals Chamber), No. ICC-01/05-01/08-3564, 30 October 2017.

<sup>11</sup> See the “Defence’s Request for an extension of time to file additional observations for Reparations”, No. ICC-01/05-01/08-3565, 1 November 2017.

new deadline eventually established for the filing of Additional Submissions by the Defence apply equally to them.<sup>12</sup>

8. Said request was partially granted by the Chamber till the 27 November 2017.<sup>13</sup>

9. On 7 November 2017, the Appeals Chamber scheduled hearings for oral arguments on the Judgment and the Sentence Decision to be held in January 2018.<sup>14</sup>

10. On 9 November 2017, the Defence requested a further revision of the timetable for the filing of documents,<sup>15</sup> alleging that the hearings before the Appeals Chamber involved a massive amount of preparation.<sup>16</sup> It argued that the current schedule places an intolerable burden upon the Defence at crucial times in both the reparations and the appellate proceedings.<sup>17</sup> Said Request was again partially granted, inducing a further revision of the timetable and setting the final deadline for Consolidated Submissions on reparations to 31 January 2018.<sup>18</sup>

11. On 21 November 2017, the Experts' Report on reparations was transmitted.<sup>19</sup>

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<sup>12</sup> See the email from the Legal Representatives to the Legal Adviser to the Chamber dated 3 November 2017, at 10:48.

<sup>13</sup> See the "Decision on the Defence request for an extension of time to file additional observations for reparations" (Trial Chamber III), No. ICC-01/05-01/08-3569, 8 November 2017, p. 5.

<sup>14</sup> See the "Scheduling order for a hearing before the Appeals Chamber" (Appeals Chamber), No. ICC-01/05-01/08 A A2 A3, 7 November 2017, p. 3.

<sup>15</sup> See the "Defence's further request for a revision of the timetable for the filing of documents", No. ICC-01/05-01/08-3570, 8 November 2017.

<sup>16</sup> *Idem*, para. 11.

<sup>17</sup> *Ibidem*, para. 14.

<sup>18</sup> See the "Decision on the Defence's further request for a revision of the timetable for the filing of documents" (Trial Chamber III), No. ICC-01/05-01/08-3576, 22 November 2017.

<sup>19</sup> A confidential redacted version of the Report available to the parties and the TFV was filed on 21 November 2017. See No. ICC-01/05-01/08-3575-Conf-Anx-Red. A *corrigendum* to this version of the report was filed on 28 November 2017. See No. ICC-01/05-01/08-3575-Conf-Anx-Red-Corr. A public redacted version of the report was filed on 30 November 2017. See No. ICC-01/05-01/08-3575-Anx-Corr2-Red.

12. On 27 November 2017, the Appeals Chamber issued an order in relation to the conduct of the hearings in the appeals of Mr Bemba against his conviction and sentence.<sup>20</sup>

13. On 1 December 2017, having been granted an extension of time,<sup>21</sup> the Legal Representatives filed Joint Submissions of Additional Information wished to be considered in the reparations order.<sup>22</sup>

14. On 5 December 2017, the LRV requested an extension of time to file her observations on the Experts' Report.<sup>23</sup> In support of the request, the LRV submitted, *inter alia*, that she has been overloaded with work in the parallel appellate proceedings, such that she has not had material time to focus on the Experts' Report, or discuss it with her clients.<sup>24</sup> On the same day, the OPCV notified the Chamber by email that it supported the LRV Request.<sup>25</sup> On 12 December 2017, the TFV supported the LRV Request.<sup>26</sup>

15. On 15 December 2017, the Chamber granted the LRV's request for an extension of time to file her Final Submissions by 31 January 2018.<sup>27</sup> Said extension was equally granted to the OPCV and the TFV.

16. On 22 December 2017, the Chamber directed the Experts to file by 31 January 2018 an *Addendum* to their Report addressing a calculation of the scope of Mr

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<sup>20</sup> See the "Order in relation to the conduct of the hearing before the Appeals Chamber" (Appeals Chamber), No. ICC-01/05-01/08-3579, 27 November 2017.

<sup>21</sup> See the "Decision on the Legal Representatives request for extension of time" (Trial Chamber III), 28 November 2017, No. ICC-01/05-01/08-3580.

<sup>22</sup> See the "Soumissions conjointes des Représentants légaux des victimes d'éléments d'informations supplémentaires en vue de l'Ordonnance en réparation", No. ICC-01/05-01/08-3581, 1 December 2017.

<sup>23</sup> See the "Demande d'extension de délai suivant « Decision on the Defence's further request for a revision of the timetable for the filing of documents »", No. ICC-01/05-01/08-3583, 5 December 2017.

<sup>24</sup> *Idem*, paras. 7 to 11.

<sup>25</sup> See the email from the OPCV to the Legal Adviser to the Chamber dated 5 December 2017, at 09:31.

<sup>26</sup> See the "Observations on the legal representative of victim's further request for an extension of time", No. ICC-01/05-01/08-3586, paras. 10 and 16.

<sup>27</sup> See the "Decision on the Legal Representative of the Victims request for extension of time" (Trial Chamber III), 14 December 2017, No. ICC-01/05-01/08-3587, paras. 12-13.

Bemba's liability including the sum-total of the harms caused by the convicted person and of the corresponding recommended reparations, or a range thereof.<sup>28</sup> In addition, the Chamber considered it necessary to receive information on the feasibility of implementing the types and modalities of reparations put forward in the Experts' Report, and requested one Organization to provide observations under rule 103 of the Rules of Procedure and Evidence (the "Rules") by 31 January 2018. The Chamber further requested the Registry to submit an updated security report on the situation in CAR to be filed by the same time-limit. In the same order, the Chamber invited the parties and the TFV to file responses by 8 February 2018 to any (i) *Addendum* of the Experts; and (ii) observations of the Organization.<sup>29</sup>

17. From 9 to 11 January 2018, the Appeals Chamber conducted the scheduled hearing.<sup>30</sup> At the end of the 11 January 2018 session, the Appeals Chamber invited written "extra observations" to be filed by 19 January 2018.<sup>31</sup>

18. On 16 January 2018, the Defence filed a request (the "Defence Request")<sup>32</sup> submitting that (a) the filing of Mr. Bemba's Final Submissions should be delayed until there is a final conviction;<sup>33</sup> (b) the filing of Mr. Bemba's Final Submissions should be delayed to take into account the overlapping and competing deadlines in the appellate and reparations proceedings.<sup>34</sup> On the same day the Chamber by email shortened the deadline to file responses to the Defence Request by 22 January 2018.<sup>35</sup>

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<sup>28</sup> Public redacted version of "Order regarding follow-up matters arising from Expert Report ICC-01/05-01/08-3575-Anx-Corr2-Red", No. ICC-01/05-01/08-3588-Red, 22 December 2017, paras. 6 to 10.

<sup>29</sup> *Idem*, para. 16 and page 8.

<sup>30</sup> See the transcripts of the hearings held from 9 to 11 January 2018, respectively No. ICC-01/05-01/08-T-372-ENG ET to No. ICC-01/05-01/05-T-374 ET WT.

<sup>31</sup> See the transcripts of the hearing held on 11 January 2018, No. ICC-01/05-01/08-T-374-ENG, page 88 lines 18-25.

<sup>32</sup> See the "Defence request for a further extension of time for Final Submissions on reparations", No. ICC-01/05-01/08-3595-Conf, 16 January 2018 (the "Defence Request"). A Public Redacted version was filed on the same date.

<sup>33</sup> *Idem*, paras. 27-33.

<sup>34</sup> *Ibidem*, paras. 34-37.

<sup>35</sup> See the email from the Legal Adviser to the Chamber dated 16 January 2018, at 18:30.

### III. Classification

19. Pursuant to regulation 23*bis*(2) of the Regulations of the Court this response is filed public since it contains no reference to the information that is redacted in the Defence Request.

### IV. Submissions

#### a. The request to delay the filing of Mr. Bemba's Final Submissions on reparations until there is a final conviction should be rejected

20. The Defence articulates that "continuing with the reparations process" pending the Appeals Judgment is unreasonable.<sup>36</sup> The Legal Representatives submit that in effect the Defence seeks a *suspension* of the reparations proceedings until the conviction become final. In support of this request, the Defence raises the following arguments:

- (i) Mr Bemba should not be required to remedy harms that are not the result of the crimes for which he was convicted and the scope of the conviction may alter as a result of the Appeals Judgment;<sup>37</sup> a clarification of the law on underlying acts and the scope of the conviction will necessarily have implications for reparations;<sup>38</sup>
- (ii) The request to file submissions on reparations makes the Defence divert resources from the appellate proceeding to prepare submissions that may become irrelevant.<sup>39</sup>

21. The Legal Representatives submit that none of these arguments are new to these proceedings. Indeed, the arguments under (i) and (ii) were raised by the Defence already in its 3 April 2017 filing, where it requested a suspension of the reparations proceedings.<sup>40</sup> The Chamber dealt with these concerns and rejected the

<sup>36</sup> See the Defence Request, *supra* note 32, para. 33.

<sup>37</sup> *Idem*, paras. 27 to 29, and 32.

<sup>38</sup> *Ibidem*, paras. 34 to 37.

<sup>39</sup> *Ibid*, para. 30.

<sup>40</sup> See the "Defence's Observations on Trial Chamber III's order inviting submissions on experts", ICC-01/05-01/08-3500-Conf", No. ICC-01/05-01/08-3513, 3 April 2017, paras. 22-25.



request in its 5 May 2017 Decision.<sup>41</sup> They were raised subsequently in the 12 June 2017 Request of the Defence.<sup>42</sup> The Chamber further addressed these arguments again in its 29 June 2017 Decision. In light of the renewed Defence Request, the Legal Representatives wish to refer in particular to the following Chamber's findings:

*"12. The Chamber considers that the Second Issue represents a re-litigation of issues raised by the Defence in its 3 April 2017 request for suspension of the reparations proceedings, namely the questions of whether the reparations proceedings could continue pending the appeal against Mr Bemba's conviction and whether, in the event that the Appeals Chamber would overturn or amend the conviction, the resources used during the preparation stage of the reparations proceedings would be wasted. The Chamber settled these matters in its Suspension Decision, in respect of which the Defence did not request leave to appeal.*

*13. Firstly, the Chamber held in the Suspension Decision, in accordance with the approach adopted by the Lubanga Appeals Chamber, that it is the execution of the reparations order which depends on a conviction being confirmed on appeal, not its issuance or preparation. As noted above, the Impugned Decision requires the Defence to submit additional information it wishes to be considered in the reparations order, as well as its submissions on the expert report(s), the submissions of other participants and any other last arguments. These steps relate to the potential issuance of the reparations order, not to its execution or implementation.*

*14. Secondly, the Defence's submission that the preparation of the reparation order despite the pending appeal could potentially result in a waste of resources, questions the balance struck by the Chamber in the Suspension Decision between its obligation to make appropriate use of resources and its obligation to promote expeditious proceedings, taking into account the ultimate goal of victims' interests.*

*15. The Chamber considers that the Second Issue therefore represents a mere disagreement with the Chamber's conclusions in the Suspension Decision. The Defence, has, however, failed to identify any legal or factual error in the Impugned Decision. Based on the above, the Chamber does not consider the Second Issue to be an appealable issue arising out of the Impugned Decision.*

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<sup>41</sup> See the "Decision on the Defence's request to suspend the reparations proceedings" (Trial Chamber III), No. ICC-01/05-01/08-3522, 5 May 2017, paras. 11-22.

<sup>42</sup> See "Mr. Bemba's request for leave to appeal the "Decision appointing experts on reparations", No. ICC-01/05-01/08-3532-Conf", No. ICC-01/05-01/08-3534, 12 June 2017, paras. 2-4, 31-33 and 35.

*16. The Chamber further notes that, should the Conviction Decision be amended by the Appeals Chamber, Mr Bemba will receive the opportunity to make submissions on the amendments, as relevant to the reparations order”.*<sup>43</sup>

22. In light of the above, the Legal Representatives argue that no new elements have been raised by the Defence that would merit a suspension of the reparations proceedings. On the face of these same arguments, the Chamber already concluded that suspending the proceedings was not appropriate because *“it would in fact negatively impact on the expeditiousness of the reparations proceedings as it would create a substantial delay”*.<sup>44</sup>

23. The Defence also argues that prejudice may arise for Mr Bemba since he is asked, before the scope of the conviction is known, to be *“on the record”* in relation to proposals for reparations which may never come to fruition. Such submissions could be used against him, in the view of the Defence, as an indication of his willingness (or otherwise) to provide reparations in a wholly hypothetical case.<sup>45</sup> However, the Legal Representatives submit that this contention is entirely hypothetical. The Chamber should not entertain an argument that merely speculates about the prejudice that may arise if a response by the Defence to a judicial order is interpreted in a certain manner. Rather, if anything, the Chamber will have an opportunity to evaluate the entirety of the proceedings at the relevant stage.

24. The Legal Representatives reiterate that the reparations proceedings should be carried out as expeditiously as possible.<sup>46</sup> A further delay in the proceedings - which incidentally cannot even be foreseen because the date of the delivery of the Appeals

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<sup>43</sup> See the *“Decision on the Defence request for leave to appeal the decision appointing experts on reparations”* (Trial Chamber III), No. ICC-01/05-01/08-3536, 29 June 2017. Footnotes omitted. Emphasis added.

<sup>44</sup> See the *“Decision on the Defence’s request to suspend the reparations proceedings”*, *supra* note 41, para. 18.

<sup>45</sup> *Idem*, para. 31.

<sup>46</sup> See the *“Response to the Defence’s request for suspension of the reparations proceedings (ICC-01/05-01/08-3513)”*, No. ICC-01/05-01/08-3519, 24 April 2017, para. 13; see the *“Order on the Trust Fund for Victims’ request for an extension of the time limit”* (Trial Chamber III), No. ICC-01/05-01/08-3442, 7 October 2016, para. 10.

Chamber's judgment is unknown - deprives victims of their right to obtain reparations as soon as possible. The rejection of the previous Defence request to suspend the reparations proceedings has allowed, in the meantime, significant preliminary steps to be taken – such as the preparation of the Experts' Report. The Legal Representatives submit that halting such a process now in the midst of the requested submissions would be inefficient and would risk hampering the ongoing discussions and reflexions.

**b. The request for an extension of time should be granted because good cause has been shown**

25. In the alternative, the Defence requests an extension of time to file its Final Consolidated Submissions by reason of the overlapping and competing deadlines it faces in both the appellate and the reparations proceedings.<sup>47</sup>

26. In this regard, the Legal Representatives note the jurisprudence of the Chamber relevant to the determination of "good cause", pursuant to regulation 35(2) of the Regulations of the Court. The existence of unanticipated competing deadlines and workload in the parallel reparations and appellate proceedings has been considered a relevant factor in the determination of good cause.<sup>48</sup>

27. The Legal Representatives submit that, at this juncture, unanticipated deadlines and workload compete in the proceedings. If the 31 January 2018 timeline to file the Final Submissions on reparations was tight in light of the Appeals hearings conducted between 9 and 11 January 2018, the "extra observations" that the Appeals Chamber has invited in relation to the appeals against the Judgment and the

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<sup>47</sup> See the Defence Request, *supra* note 32, para. 35.

<sup>48</sup> See the "Decision on the Defence request for an extension of time to file additional observations for reparations", No. ICC-01/05-01/08-3569, *supra* note 13, para. 7; the "Decision on the Defence's further request for a revision of the timetable for the filing of documents", No. ICC-01/05-01/08-3576, *supra* note 18, para. 10; and the "Decision on the Legal Representative of the Victims request for extension of time" No. ICC-01/05-01/08-3587, *supra* note 27, para. 10.

Sentence (due on 19 January 2018)<sup>49</sup> have made the competing preparations incompatible.

28. The Legal Representatives note that, in line with the latest development in the reparations proceedings, responses to any: (i) *Addendum* to the Experts' Report; and (ii) observations to the submissions under rule 103 of the Rules by one Organization have been invited by 8 February 2018.<sup>50</sup> The Legal Representatives submit that it is in the interests of efficiency and expeditiousness to set one only deadline for the filing of Consolidated Final Submissions. Such Consolidated Final Submissions would address, together, the Experts' Report and all additional information requested by the Chamber which is to be filed on 31 January 2018. The Legal Representatives believe that it is in the best interests of the victims they represent to be in a position to present consolidated and coherent submissions and support accordingly a short extension of time until 28 February 2018. The Legal Representatives posit that allowing for consolidated submissions will reduce the number of documents filed in the proceedings, reduce the number of pages to be considered and will prevent repetitions and contradictions. The Legal Representatives also request the Chamber to allow for the filing of a document not exceeding 70 pages should the request for extension of time for consolidated final submissions be granted.

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<sup>49</sup> See the transcripts of the hearing held on 11 January 2018, No. ICC-01/05-01/08-T-374-ENG ET, page 88 lines 18-25.


<sup>50</sup> See the "Order regarding follow-up matters arising from Expert Report ICC-01/05-01/08-3575-Anx-Corr2-Red", *supra* note 28, para. 16 and p. 8.

## V. Conclusion

29. For the foregoing reasons, the Legal Representatives respectfully request the Chamber (i) to dismiss the Defence request to delay the filing of Mr. Bemba's Final Submissions until there is a final conviction; and (ii) to grant an extension of the time limit for the filing of Consolidated Final Submissions on reparations until 28 February 2018 and to allow for the filing of a document not exceeding 70 pages.



**Paolina Massidda**



**Marie Edith Douzima-Lawson**

Dated this 22<sup>th</sup> day of January 2018

At The Hague, The Netherlands