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No.: ICC-01/05-01/08
Date: 29 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

Public redacted version of “Decision on requests for further amendments to the reparations timetable”

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

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Mr James Stewart
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Mr Peter Haynes QC
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Legal Representatives of the Victims

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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

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States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

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**Victims Participation and Reparations
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Mr Philipp Ambach

Trust Fund for Victims

Mr Pieter de Baan

Others

Appointed Experts
[REDACTED]

Trial Chamber III (“Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, having regard to Regulation 35 of the Regulations of the Court (“Regulations”), issues the following “Decision on requests for further amendments to the reparations timetable”:

I. Procedural background and submissions

1. The Chamber recalls the procedural history set out in its recent extension of time decisions,¹ pursuant to which the deadline for the Legal Representative of the Victims (“LRV”), the Office of Public Counsel for Victims (“OPCV”), the Trust Fund for Victims (“TFV”) and the Defence for Mr Bemba (“Defence”) to file final submissions in the reparations proceedings is 31 January 2018.²
2. On 22 December 2017, the Chamber issued an order regarding follow-up matters arising from the report of the experts appointed by the Chamber (“Appointed Experts”) filed 20 November 2017 (“Expert Report”),³ in which it, *inter alia*, (i) directed the Appointed Experts to file, by 31 January 2018 either jointly or separately, an addendum to the Expert Report addressing the calculation of the scope of Mr Bemba’s liability for reparations (“Expert Addendum”), (ii) directed the Registry to provide assistance to the Appointed Experts, including in procuring additional information required by them to prepare their addendum

¹ 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, paras 1-4 (a public redacted version was filed on the same day: ICC-01/05-01/08-3559-Conf); Decision on the Defence request for an extension of time to file additional observations for reparations, 8 November 2017, ICC-01/05-01/08-3569, paras 1-5; 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, paras 1-7; Decision on the Legal Representatives request for extension of time, 28 November 2017, ICC-01/05-01/08-3580, with confidential Annex A, paras 1-4; Decision on the Legal Representative of the Victims request for extension of time, 14 December 2017, ICC-01/05-01/08-3587, paras 1-4.

² ICC-01/05-01/08-3576, para. 11; ICC-01/05-01/08-3587, paras 12-13. The LRV, OPCV and TFV final submissions encompass submissions on the Expert Report, the submissions of other parties and participants and any other last arguments they wish for the Chamber to consider before rendering its reparations order. The Defence final submissions encompass this, as well as any additional information the Defence wishes to be considered in the reparations order, if any.

³ 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 LRV, OPCV, the Defence and the TFV 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.

and to file, also by 31 January 2018, an update on the security situation in the Central African Republic (“CAR”), and (iii) invited observations, from [REDACTED] on the feasibility of implementing the types and modalities of reparations recommended in the Expert Report (“Feasibility Observations”).⁴ The Chamber also invited the LRV, OPCV, Defence and TFV to file responses to the Expert Addendum and the Feasibility Observations by 8 February 2018 (“8 February Responses”).⁵

3. From 9 to 11 January 2018, the Appeals Chamber held a hearing in the appeals against Mr Bemba’s conviction and sentence (“Appeals Hearing”).⁶ During the Appeals Hearing, the Appeals Chamber invited additional written submissions from the Defence, Office of the Prosecutor and LRV, not exceeding 15 pages in length, to be filed by 19 January 2018 (“Additional Appeal Submissions”).⁷ Additional Appeal Submissions were filed by each on that date.⁸
4. On 16 January 2018, the Defence submitted its “Defence request for a further extension of time for Final Submissions on reparations” (“Defence Request”),⁹ in which it seeks to extend the deadline for filing its final submissions (i) until Mr Bemba’s conviction is finally dealt with on appeal (“Adjournment *sine die*”)¹⁰, or, alternatively (ii) to some unspecified date, to account for the competing deadline in the appeals proceedings.¹¹ In support of the request for the Adjournment *sine die*, the Defence submits, *inter alia*, that reparations are intrinsically linked to the

⁴ Order regarding follow-up matters arising from Expert Report ICC-01/05-01/08-3575-Anx-Corr2-Red, ICC-01/05-01/08-3588-Conf, p. 8. A public redacted version was filed on the same day: ICC-01/05-01/08-3588-Red.

⁵ ICC-01/05-01/08-3588-Red, p. 8.

⁶ Transcript of hearing on 9 January 2018, ICC-01/05-01/08-T-372-CONF-ENG; transcript of hearing 10 January 2018, ICC-01/05-01/08-T-373-ENG; transcript of hearing on 11 January 2018, ICC-01/05-01/08-T-374-ENG. *See also* Appeals Chamber, Scheduling order for a hearing before the Appeals Chamber, 7 November 2017, ICC-01/05-01/08-3568; Appeals Chamber, Order in relation to the conduct of the hearing before the Appeals Chamber, 27 November 2017, ICC-01/05-01/08-3579.

⁷ Transcript of hearing on 11 January 2018, ICC-01/05-01/08-T-374-ENG, p. 88, lines 18-25.

⁸ Appellant’s submissions further to the appeal hearing, ICC-01/05-01/08-3596-Conf (a public redacted version was filed on the same day: ICC-01/05-01/08-3596-Red); Prosecution’s Final Submissions following the Appeal Hearing, ICC-01/05-01/08-3597 with annex; Observations supplémentaires de la Représentante légale des victimes conformément à l’ordre oral de la Chambre d’appel du 11 janvier 2018, ICC-01/05-01/08-3598.

⁹ Defence request for a further extension of time for Final Submissions on reparations, ICC-01/05-01/08-3595-Conf. A public redacted version was filed on the same day: ICC-01/05-01/08-3595-Red.

¹⁰ Defence Request, ICC-01/05-01/08-3595-Red, paras 1-6, 27-33.

¹¹ Defence Request, ICC-01/05-01/08-3595-Red, paras 7, 34-35.

scope of Mr Bemba's conviction, and, without pre-judging the outcome of the appeal, it can no longer reasonably be discounted, given the length, detail, and content of the Appeals Hearing, that the scope of Mr Bemba's conviction may alter.¹² It submits that requiring final submissions from Mr Bemba on reparations ahead of the appeals outcome is therefore inappropriate since it: (i) would lead to a waste of resources and work,¹³ and (ii) could give rise to prejudice to Mr Bemba, since putting his proposals "on the record" could be "used against him as an indication of his willingness (...) to provide reparations in a wholly hypothetical case".¹⁴ In respect of its alternative request, the Defence submits it has been again subject to overlapping and competing deadlines due to the ordering of the Additional Appeals Submissions,¹⁵ and that an extension would permit the filing of consolidated final Defence submissions, which could respond at the same time to the Expert Addendum and the Feasibility Observations.¹⁶

5. On 22 January 2018, the LRV and OPCV filed their "Joint Response to the Defence Request for a further extension of time to file its Final Consolidated Submissions on reparations" ("Joint Response"),¹⁷ in which they: (i) oppose the request for the Adjournment *sine die*,¹⁸ but (ii) support the request for an extension to account for the competing deadline in the appeals proceedings.¹⁹ They seek an extension to 28 February 2018 to file consolidated final submissions, not exceeding 70 pages, covering their final submissions, their responses to the Expert Addendum and the Feasibility Observations ("LRV/OPCV Extension Request").²⁰ The LRV and OPCV submit, *inter alia*, that it is in the interests of efficiency and expediency to set one only deadline for the filing of consolidated final submissions, since this would reduce the number of documents filed in the

¹² Defence Request, ICC-01/05-01/08-3595-Red, paras 1-5, 27-33.

¹³ Defence Request, ICC-01/05-01/08-3595-Red, para. 30.

¹⁴ Defence Request, ICC-01/05-01/08-3595-Red, para. 31.

¹⁵ Defence Request, ICC-01/05-01/08-3595-Red, paras 34-35.

¹⁶ Defence Request, ICC-01/05-01/08-3595-Red, para. 36.

¹⁷ Joint Response to the Defence Request for a further extension of time to file its Final Consolidated Submissions on reparations, ICC-01/05-01/08-3599.

¹⁸ Joint Response, ICC-01/05-01/08-3599, paras 1, 20-24.

¹⁹ Joint Response, ICC-01/05-01/08-3599, paras 2, 25-28.

²⁰ Joint Response, ICC-01/05-01/08-3599, para. 28.

proceedings, prevent repetitions and contradictions,²¹ and that it is in the best interests of the victims to be in a position to present consolidated and coherent submissions.²²

6. No observations on the Defence Request were received from the TFV.
7. On 25 January 2018, the Registry filed a letter from the Appointed Experts dated 24 January 2018 (“Experts’ Request”)²³ seeking an extension to 16 February 2018 to file the Expert Addendum.²⁴ The additional time is sought due to significant practical challenges faced by both them and the Registry in gathering the information required for the addendum, which result from the complexities of the queries as well as the infrastructural and security context of the CAR. The Appointed Experts submit that if the current 31 January deadline were maintained, there would entail a tangible risk that crucial information would not yet be available to them in time.²⁵

II. Analysis

8. The Chamber recalls that pursuant to Regulation 35(2) of the Regulations, it may extend or reduce a time limit if good cause is shown, and, where appropriate, after having given the participants an opportunity to be heard.

a. Adjournment sine die

9. The Chamber considers that this aspect of the Defence Request represents an attempted re-litigation of the Chamber’s decision issued on 5 May 2017, in which it rejected the Defence’s request to suspend the reparations proceedings pending

²¹ Joint Response, ICC-01/05-01/08-3599, para. 28.

²² Joint Response, ICC-01/05-01/08-3599, para. 28.

²³ Transmission of Request from the Reparations Experts for an Extension of Time for the Submission of their Joint Addendum to the Expert Report pursuant to ICC-01/05-01/08-3588-Conf, ICC-01/05-01/08-3600-Conf, with confidential annex, ICC-01/05-01/08-3600-Conf-Anx.

²⁴ Experts’ Request, ICC-01/05-01/08-3600-Conf-Anx, p. 2.

²⁵ Experts’ Request, ICC-01/05-01/08-3600-Conf-Anx, p. 2.

the outcome of the appeals proceedings.²⁶ It notes that the Defence has not identified any new circumstances which could justify reconsideration by the Chamber of its previous position.

b. Timetable extension

10. The Chamber is satisfied, on the basis of the Experts' Request, that the delay by the Appointed Experts in preparing their Expert Addendum has been caused by factors outside of their control, namely the timely procurement of required information, including from the field.²⁷ Although it is important for the reparations proceedings to continue expeditiously, the Chamber considers that it would be assisted by the Appointed Experts' input on the scope of liability for the preparation of a reparations order. It further notes that the requested extension is relatively short and would therefore not significantly delay proceedings. Therefore, the Chamber is satisfied that good cause for an extension has been established.

11. To allow for the Defence, LRV and OPCV to respond to the Expert Addendum, good cause also exists to extend their response deadline beyond 8 February. However, changing this deadline alone would mean the filing of three sets of submissions from each. The Chamber instead considers it to be in the interests of efficiency and expediency at this stage to combine the final submissions due 31 January and the 8 February Responses into a single set of submissions ("Consolidated Final Submissions"), as suggested by the Defence and the LRV/OPCV.²⁸ The Chamber considers that no more than 70 pages should be required for the Consolidated Final Submissions, and that one and a half weeks after the filing of the Expert Addendum would be sufficient time to finalise them.

²⁶ Decision on the Defence's request to suspend the reparations proceedings, 5 May 2017, ICC-01/05-01/08-3522. *See also* Decision on the Defence request for leave to appeal the decision appointing experts on reparations, 29 June 2017, ICC-01/05-01/08-3536.

²⁷ Experts' Request, ICC-01/05-01/08-3600-Conf-Anx, pp 1-2.

²⁸ Defence Request, ICC-01/05-01/08-3595-Red, para. 36; Joint Response, ICC-01/05-01/08-3599, para. 28.

12. Although no response to the Defence Request was received from the TFV, the Chamber considers it to be in the interests of consistency to equally apply the reasoning in paragraph 11 to the TFV.

13. The timetable previously set by the Chamber is therefore amended as follows:

- i. The Appointed Experts are to file the Expert Addendum by **16 February 2018**;
- ii. The Defence, LRV, OPCV and TFV are to file Consolidated Final Submissions, of no more than 70 pages, by **28 February 2018**.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

PARTIALLY GRANTS the Defence Request.



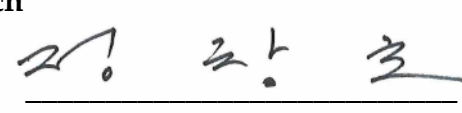
GRANTS the LRV/OPCV Extension Request.

GRANTS the Experts' Request.

AMENDS the timetable previously set by it in accordance with paragraph 13 above.

ORDERS the Registry to file a public redacted version of the Experts' Request.

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 29 January 2018

At The Hague, The Netherlands