

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original English

No.: ICC-01/05-01/08
Date. 15 August 2016

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 Document

**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**

Source: The United Nations

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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Section**

Ms Isabelle Guibal

Other

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I. INTRODUCTION

1. The United Nations respectfully seeks leave to file a joint submission, pursuant to Article 75(3) of the Statute and Rule 103 of the Rules of Procedure and Evidence (“Rules”) and in accordance with the Trial Chamber’s Order of 22 July 2016 requesting submissions relevant to reparations, on behalf of the following offices of the United Nations:
 - i. The Office of the High Commissioner for Human Rights (OHCHR); and
 - ii. The Office of the Special Representative of the United Nations Secretary-General on Sexual Violence in Conflict (OSRSG-SVC)
2. Other United Nations offices, funds, programmes and representatives that have not yet expressed their intention to do so due to various reasons may also contribute to the joint submission should the Trial Chamber grant leave to the United Nations to file the submission.

II. PROCEDURAL HISTORY

3. On 21 March 2016, the Trial Chamber rendered its judgment finding Mr. Bemba guilty of murder and rape as crimes against humanity and murder, rape and pillaging as war crimes.¹ This judgment represented the first time that a defendant was found guilty by the International Criminal Court (“the Court”) for crimes of sexual violence.
4. On 21 June 2016, the Chamber sentenced Mr. Bemba to 18 years imprisonment.² In the Chamber’s sentencing decision, it “note[d] that the number of victims of underlying acts of rape is substantial” and that these rapes were “of utmost, serious gravity.”³ It also held that rape and pillaging were committed with particular cruelty and that rape occurred against particularly defenceless victims.⁴

¹ The Prosecutor v. Jean-Pierre Bemba Gombo (Case No. ICC-01/05-01/08), Judgment pursuant to Article 74 of the Statute, 21 March 2016, para 752. Mr. Bemba has subsequently appealed the decision.

² The Prosecutor v. Jean-Pierre Bemba Gombo (Case No. ICC-01/05-01/08), Decision on Sentence pursuant to Article 76 of the Statute, 21 June 2016, para 97.

³ *Ibid*, para 40.

⁴ *Ibid*, paras 43, 47, 57.

5. On 22 July 2016, the Trial Chamber issued an “Order requesting submissions relevant to reparations” (the Trial Chamber’s Order). In paragraph 7 of the Trial Chamber Order, the Chamber requested the Registry and the Trust Fund for Victims (“TFV”) to submit by 15 September 2016 observations on the following issues.
 - a. whether the principles established by the Appeals Chamber in the Lubanga case need to be amended or supplemented in the light of the particular circumstances of the case;
 - b. the criteria and methodology to be applied in the determination and assessment of (i) the eligibility of victims; (ii) the relevant harms and (iii) the scope of liability of Mr Bemba, including the determination of the precise extent of the (monetary) obligations to be imposed on him;
 - c. the types and modalities of reparations appropriate to address the harm relevant in the circumstances of the case, including factors relating to the appropriateness of awarding reparations on an individual basis, a collective basis, or both;
 - d. whether experts may be usefully appointed to assist the Chamber in determining any of the issues set out above pursuant to Rule 97 of the Rules;
 - e. any other issue the parties and participants wish to bring to the attention of the Chamber.
6. In addition, the Trial Chamber invited interested organisations to request leave to make submissions, pursuant to Article 75(3) of the Statute and Rule 103 of the Rules, on the issues set out in paragraph 7 of the Trial Chamber Order, by 15 August 2016.

III. RELEVANT EXPERTISE OF THE UNITED NATIONS OFFICES

A. OHCHR

7. The mandate of the High Commissioner for Human Rights, set forth in United Nations General Assembly resolution 48/141 of 7 January 1994, includes promoting and protecting the effective enjoyment by all of all civil, cultural, economic, political and social rights, carrying out the tasks assigned to him by the competent bodies of the United Nations system and to making recommendations to them with a view to improving the promotion and protection of all human rights, preventing human rights violations, enhancing international cooperation for human rights, coordinating relevant activities throughout the United Nations and strengthening and streamlining the United Nations human rights machinery.
8. OHCHR supports various human rights mechanisms that develop and monitor international human rights norms and standards, including with regard to the right to a remedy and reparations for victims of gross violations of human rights. OHCHR seeks to ensure that these norms and standards form the basis of rule of law programmes, policies and activities at the global, regional and national levels.
9. Combating impunity and strengthening accountability and the rule of law has long been a principal focus for OHCHR. It has been actively engaged in the area of transitional justice through policy development, research and analysis, and legal advice and assistance for the design and implementation of transitional justice processes from a human rights perspective. It develops guidance materials and operational tools which outline international norms and standards as well as good practices with regard to reparations. OHCHR, including through its field presences, has supported transitional justice programmes in more than 25 countries worldwide.
10. Throughout this work, OHCHR has acquired significant expertise in the area of reparations, including with regard to standard-setting, formulation of guiding principles and their application at the national level. OHCHR gathers and analyses good practices, and draws lessons learned to better address challenges in the area of reparations. For instance, OHCHR supported the drafting and finalizing of the Basic Principles and Guidelines on the Right to a Remedy and Reparations for Gross Violations of Human Rights and Serious Violations of International Humanitarian Law which was adopted by consensus in General Assembly resolution 60/147

11. Similarly, OHCHR supported the work that led to the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity and the accompanying studies and reports, which also contain important guiding principles on reparations.
12. To build upon this work and to assist in the implementation of the relevant principles, OHCHR developed an operational Rule of Law Tool on Reparations Programmes to provide guidance on implementing reparations initiatives. In 2010, OHCHR lead the development of the Secretary-General's Guidance Note on Transitional Justice, which also addresses the issue of reparations. In 2014, in cooperation with UN Women, OHCHR prepared the Secretary-General's Guidance Note on Reparations for Conflict-Related Sexual Violence
13. OHCHR field presences have also acquired significant practical experience with regard to participatory reparations approaches. For instance, OHCHR assisted in holding consultations with victims in Uganda, Nepal, the DRC and Kosovo, seeking their views on reparations. OHCHR has also previously filed a United Nations Joint Submission to the Court as amicus curiae in the case of *The Prosecutor v Germain Katanga* on victims' reparations.

B. OSRSG-SVC

14. The Office of the Special Representative of the Secretary-General for Sexual Violence in Conflict ("OSRSG-SVC") was created by the United Nations Security Council in resolution 1888 in order to, inter alia, "engage in advocacy efforts [...] with judicial representatives [...] in order to address [...] sexual violence in armed conflict." These advocacy efforts have included the OSRSG-SVC previously filing submissions to the Court as amicus curiae in the case of *The Prosecutor v Germain Katanga* on victims' reparations. The OSRSG-SVC believes victims' reparations are an integral component to any justice response to conflict-related sexual violence and continually advocates the importance of reparations to political, developmental and judicial actors.
15. The OSRSG-SVC has also provided technical expertise and assistance on legal issues related to reparations for victims of conflict-related sexual violence to governmental

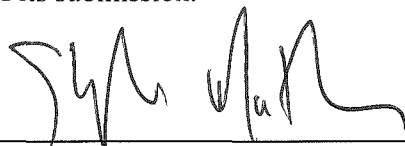
entities through its Team of Experts on the Rule of Law and Sexual Violence in Conflict (“Team of Experts”).

16. The Chamber’s decision regarding reparations for victims of rape as a war crime and crime against humanity will set international judicial precedent. If properly designed, these reparations can be transformative for the victims’ lives and the Central African Republic itself. Indeed, conflict-related sexual violence in the Central African Republic remains a recurring problem, which has led the OSRSG-SVC to sign a Joint Communiqué on behalf of the United Nations with the Government in 2012 in order to address it. Moreover, the OSRSG-SVC and its Team of Experts provide capacity support on an on-going basis to the Central African Republic to strengthen the country’s ability to end conflict-related sexual violence.

IV. APPLICATION

17. In furtherance of their respective mandates from the Security Council and / or the General Assembly, OHCHR and the OSRSG-SVC intend to use the joint submission to share their experiences and expertise on the issue of reparations for victims in order to assist the Chamber to address the issues set out in the Trial Chamber Order of 22 July 2016. Other United Nations offices, funds and programmes and representatives may also contribute to the joint submission in order to assist the Chamber.

ACCORDINGLY, the United Nations respectfully requests leave to file a joint submission in this matter on the issues set out in paragraph 7 of the Trial Chamber Order of 22 July 2016. The United Nations respectfully requests that the Court allow 30 calendar days for the preparation of its submission.



Stephen Mathias, Assistant Secretary-General
in charge of the Office of Legal Affairs
on behalf of

The High Commissioner for Human Rights and the Special Representative of the
Secretary-General on Sexual Violence in Conflict

Dated this 15th day of August 2015

At New York, United States of America