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**International
Criminal
Court**

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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

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

Source: 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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Trust Fund for Victims

I. Introduction

1. The Principal Counsel of the Office of Public Counsel for Victims, acting as legal representative of applicants for reparations (the “Principal Counsel”)¹, submits that the Defence’s further request for a revision of the timetable for the filing of documents (the “Defence Further Request”)² should be dismissed *in limine*, or, rejected.

2. Preliminarily, the Principal Counsel notes that victims have a right for the reparations proceedings to be conducted as expeditiously as possible particularly when the crimes were committed more than a decade ago, so that their expectations – naturally high at this stage - could be met. Consequently, timelines and deadlines are particularly important and caution should be exercised by the parties when seeking extensions of time, pursuant to regulation 35(2) of the Regulations of the Court (the “Regulations”).

3. The Principal Counsel contends that the Defence Further Request appears to be *de facto* a request for reconsideration of the previous ruling of the Chamber. This remedy is not foreseen in the legal texts of the Court and, in any case, the Defence does not even attempt to provide reasons which could justify a reconsideration of the

¹ See the “Decision on the Observations on legal representation of unrepresented applicants” (Trial Chamber III), No. ICC-01/05-01/08-651, 9 December 2009; the “Decision on the legal representation of victim applicants at trial” (Trial Chamber III), No. ICC-01/05-01/08-1020, 19 November 2010; and the “Decision on 270 applications by victims to participate in the proceedings” (Trial Chamber III), No. ICC-01/05-01/08-1862, 25 October 2011. See also the “Notification of designation of the Office of Public Counsel for Victims as legal representative of unrepresented applicants for reparations”, No. ICC-01/05-01/08-2982-Anx1, 17 February 2014; and the “Notification of designation of the Office of Public Counsel for Victims as Legal Representative of unrepresented applicants”, No. ICC-01/05-01/08-2256, 7 August 2002; the “Notification of designation of the Office of Public Counsel for Victims as Legal Representative of unrepresented applicants”, No. ICC-01/05-01/08-2848, 25 October 2013 and the “Notification of designation of the Office of Public Counsel for Victims as Legal Representative of unrepresented applicants”, No. ICC-01/05-01/08-2906, 25 November 2013. See also the “Order requesting submissions relevant to reparations” (Trial Chamber III), No. ICC-01/05-01/08-3410, 22 July 2016; and the “Order on the Registry request for extension of time to identify experts » (Trial Chamber III), No. ICC-01/05-01/08-3453, 28 October 2016, p. 6.

² 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, para. 15 (the “Defence Further Request”).

decision of the Chamber. Therefore, the Defence Further Request should be dismissed *in limine*.

4. However, should the Chamber decide to entertain the Request, the Principal Counsel argues that the Defence has not shown good cause for its demand to be granted. In this regard, the Principal Counsel submits that the Chamber has already granted enough time for preparation of submissions on reparations and it has recently amended the reparations timetable³ following the Appeals Chamber's order for the hearing of oral arguments in the appeals against the Judgement and the Sentence Decision.⁴

II. Procedural Background

5. On 22 July 2016, Trial Chamber III (the "Chamber") requested the Prosecution, the Trust Fund for Victims (the "TFV"), the Defence, the Legal Representative of the Victims (the "LRV"), and the Office of Public Counsel for Victims (the "OPCV") to file observations on issues related to reparations.⁵ In addition, the Chamber requested the Registry to provide a list of experts to assist in its determinations relevant to reparations.⁶

6. On 31 October 2016, the Prosecution,⁷ the TFV,⁸ the Defence,⁹ the LRV and the OPCV¹⁰ submitted their observations on reparations.

³ 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.

⁴ See the "Scheduling order for a hearing before the Appeals Chamber" (Appeals Chamber), No. ICC-01/05-01/08-3568, 7 November 2017, p. 3.

⁵ See the "Order requesting submissions relevant to reparations" (Trial Chamber III), No. ICC-01/05-01/08-3410, 22 July 2016, para. 7.

⁶ *Idem*, para. 9.a.

⁷ See the "Prosecution's Observations on Reparations", No. ICC-01/05-01/08-3454, 31 October 2016.

⁸ See the "Observations relevant to reparations", No. ICC-01/05-01/08-3457, 31 October 2016.

⁹ See the "Public redacted version of Defence observations on reparations", No. ICC-01/05-01/08-3458-Red, 1 November 2016.

7. On 2 June 2017, the Chamber appointed four experts to assist in the reparations proceedings and instructed them to file their report(s) by 15 September 2017.¹¹ The Chamber also set the deadlines for the parties and the TFV to file observations on the experts' report(s).¹²

8. On 30 August 2017, the Chamber extended the deadline for the filing of the experts' report(s) until 20 November 2017.¹³ Consequently, the Chamber amended the original deadline for the parties and the TFV to file their observations.¹⁴

9. On 30 October 2017, the Appeals Chamber issued an order in the appeal of Mr Bemba against his conviction, requiring, *inter alia*, the Defence to file further submissions on issues related to its ground of appeal on the contextual elements of crimes against humanity, by 13 November 2017.¹⁵

10. 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 2017.¹⁶

11. On 3 November 2017, the LRV and the OPCV jointly informed the Chamber by email that they did not oppose the request, asking that any new deadline

¹⁰ See the "Submissions relevant to reparations", No. ICC-01/05-01/08-3455, 31 October 2016; and 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.

¹¹ See the "Decision appointing experts on reparations" (Trial Chamber III), No. ICC-01/05-01/08-3532-Red, 2 June 2017.

¹² *Idem*, para. 15-16.

¹³ 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.

¹⁴ *Idem*.

¹⁵ See the "Order for submissions on the contextual elements of crimes against humanity" (Appeals Chamber), No. ICC-01/05-01/08-3564.

¹⁶ 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.

eventually established for the filing of additional submissions on reparations apply equally to them.¹⁷

12. On 7 November 21017, the Appeals Chamber scheduled a hearing of oral arguments on the Judgment and the Sentence Decision to be held from 9 to 12, and on 16 January 2018.¹⁸

13. On 8 November 2017, the Chamber partially granted the Defence's request for extension of time, instructing the parties to file their additional submissions on reparations by 27 November 2017.¹⁹

14. On 9 November 2017, the Defence requested a further revision of the timetable for the filing of documents (the "Defence Further Request"),²⁰ alleging that the hearings before the Appeals Chamber involve a massive amount of preparation.²¹ It argued that the current schedule places an intolerable burden upon the Defence at crucial times in both the reparations and the appellate proceedings.²²

¹⁷ Email from LRV and OPCV to the Legal Adviser to the Chamber sent on 3 November 2017 at 10:48.

¹⁸ See the "Scheduling order for a hearing before the Appeals Chamber", *supra* note 4, p. 3.

¹⁹ See the "Decision on the Defence request for an extension of time to file additional observations for reparations", *supra* note 3, p. 5.

²⁰ See the Defence Further Request, *supra* note 2.

²¹ *Idem*, para. 11.

²² *Ibidem*, para. 14.

III. Submissions

15. Preliminarily, and as already submitted and recalled *supra*, the Principal Counsel notes that the reparations proceedings should be carried out expeditiously.²³ Indeed, a further delay in the proceedings deprives victims of their right to obtain reparations as soon as possible. In this regard, victims express the following concerns:

- (i) Mr Bemba has been convicted for crimes committed in 2002-2003 and most victims are yet to receive assistance or reparations for the harm they suffered from;²⁴
- (ii) So much time has passed since the events that various victims have passed away before the issuance of the Judgment;²⁵
- (iii) Victims may lose hope in and/or disengage from the current proceedings.²⁶

a. A *de facto* reconsideration request

16. The Principal Counsel notes that the Defence Further Request was filed one day after the Chamber's decision to partially grant the request for an extension of time and set new deadlines, accordingly. In the view of the Principal Counsel, said Request amounts to a *de facto* application for reconsideration of the Chamber's ruling and therefore should be dismissed *in limine*.

²³ 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 also 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.

²⁴ See the "Response to the Defence's request for suspension of the reparations proceedings (ICC-01/05-01/08-3513)", *supra* note 23, para. 13.

²⁵ See the "Decision on 'Requête relative à la reprise des actions introduites devant la Cour par des victimes décédées'" (Trial Chamber III), No. ICC-01/05-01/08-3346, 24 March 2016, paras. 1 and 8.

²⁶ See *e.g.* the "Common Legal Representative for Victims' Comprehensive Report on the Withdrawal of Victims from the Turbo area by Letter dated 5 June 2013", No. ICC-01/09-01/11-896-Corr-Red, 5 September 2013, paras. 12-13 and 15.

17. In various occasions, different Chambers have clarified that a motion for reconsideration is not a legal remedy foreseen in the legal texts of the Court and, consequently, they have dismissed *in limine* such requests.²⁷

18. Although exceptionally, a limited number of motions for reconsideration have been entertained.²⁸ Said motions have been evaluated against a very strict test, namely that “[i]rregular decisions can be varied if they are manifestly unsound and their consequences are manifestly unsatisfactory”.²⁹ The Principal Counsel contends that it is for the party filing such an application to provide the reasons underlying the request. In the present instance, the Defence does not even attempt to provide reasons in support that the decision of the Chamber was irregular.

19. In accordance with the jurisprudence of Trial Chamber III, “a significant change in circumstances, or new and compelling reasons, may justify reconsideration of a decision”.³⁰ In this regard, the Principal Counsel notes that, by the time the Chamber granted the

²⁷ See the “Decision on the Prosecutor’s Position on the Decision of Pre-Trial Chamber II to Redact Factual Descriptions of Crimes from the Warrants of Arrest, Motion for Reconsideration, and Motion for Clarification” (Pre-Trial Chamber II), No. ICC-02/04-01/05-60, 28 October 2005, paras. 18 and 21. See also the “Decision on the Prosecution Motion for Reconsideration” (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-01/06-123, 23 May 2006, p. 3; and the “Decision on the Prosecution Motion for Reconsideration and, in the alternative, Leave to Appeal” (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-01/06-166, 23 June 2006, para. 10.

²⁸ See the “Decision on the Defence request for reconsideration and clarification” (Trial Chamber VI), No. ICC-01/04-02/06-483, 27 February 2015, para. 13: “the Statute does not provide guidance on reconsideration of interlocutory decisions, but the Chamber considers that the powers of a chamber allow it to reconsider its own decisions, prompted by one of the parties or proprio motu. Reconsideration is exceptional, and should only be done if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice. New facts and arguments arising since the decision was rendered may be relevant to this assessment” [emphasis added].

²⁹ See the “Decision on the defence request to reconsider the ‘Order on numbering of evidence’ of 12 May 2010” (Trial Chamber I), No. ICC-01/04-01/06-2705, 30 March 2011, para. 18. See also the “Decision on the request to present views and concerns of victims on their legal representation at the trial phase” (Trial Chamber V), No. ICC-01/09-01/11-511, 13 December 2012, para. 6.

³⁰ See the “Public redacted version of Decision on ‘Defence Request for Reconsideration of the ‘Decision on ‘Defence request for recall of Witness P-178, ICC-01/05-01/08-3186-Conf’” (Trial Chamber III), ICC-01/05-01/08-3204-Red, 11 December 2014, para. 14. See also the “Decision on Defence Request for Notice (Trial Chamber III), No. ICC-01/05-01/08-3089, 12 June 2014, para. 17. See also, ICC-01/05-01/08-T-42-CONF-ENG ET, p. 4, lines 1 to 5.

last extension of time,³¹ the Appeals Chamber had already decided to hold hearings in January 2018.³² Rather than presenting new facts which could support a significant change in the circumstances, the Defence highlights circumstances of which the Chamber had adequate notice. As such, the Defence seems to merely express its disagreement with the new established timeline, in line with previous attempts to postpone the reparations proceedings altogether; or challenge the timelines set out within the remit of the Chamber's exercise of discretion.³³ It follows that the request should be rejected.

b. Good cause has not been shown

20. In the alternative, the Principal Counsel contends that the Defence does not show good cause and therefore the Defence Further Request should be dismissed.

21. In this regard, the Principal Counsel notes the jurisprudence of the Appeals Chamber relevant to the determination of "good cause" pursuant to regulation 35(2) of the Regulations.³⁴ The need to prepare complex filings, the length of the documents involved and the novel and complex nature of the issues at stake are factors to be properly taken into account, following the said jurisprudence.³⁵ However, it is insufficient that the existing time limits create difficulties for the work of counsel.³⁶

³¹ See the "Decision on the Defence request for an extension of time to file additional observations for reparations", *supra* note 3, p. 5.

³² See the "Scheduling order for a hearing before the Appeals Chamber", *supra* note 4, p. 3.

³³ 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, para. 19.

³⁴ See the "Decision on the requests for time and page extension" (Appeals Chamber), ICC-01/09-01/11-1971, 18 September 2015, paras. 6 and 7. See also the "Decision on the application by Counsel for Mr. Thomas Lubanga Dyilo to extend the time limit for the filing of the response to the Prosecutor's document in support of the appeal" (Appeals Chamber), No. ICC-01/04-01/06-190 OA3, 11 July 2006, para. 4; and the "Decision on the 'Requête aux fins de suspension des délais prévus par la Règle 154(1) du Règlement de procédure et de preuve et par la Norme 64(5) du Règlement de la Cour jusqu'à la fin des vacances judiciaires, fixée au lundi 6 août 2012'" (Appeals Chamber), No. ICC-02/11-01/11-189 OA, 19 July 2012, paras. 2 and 4.

³⁵ See the "Decision on the requests for time and page extension" (Appeals Chamber), No. ICC-01/09-01/11-1971, 18 September 2015, paras. 6 and 7.

³⁶ See the "Decision on the 'Requête aux fins de prorogation des délais de dépôt des demandes d'expurgations, de soumission d'informations relatives à la présentation de témoignages *viva voce* et

22. As noted by the Chamber, *“both of Mr Bemba’s appeals against the conviction and the sentence have already been filed and are awaiting a decision of the Appeals Chamber”*.³⁷ In the various documents submitted during the course of the appeals’ litigation, the Defence has articulated the arguments it wishes to raise against the Judgment and the Sentence Decision and it has responded to the issues advanced by the Prosecution and the Legal Representative of Victims. Although directions on the conduct of the proceedings and the subject matter of the January 2018 appeal hearings are pending,³⁸ it cannot be ignored that the crucial issues in the appeal have already been litigated, at length, which strongly alleviates the potential complexity of the Defence preparation and the novelty of questions involved.

23. The Principal Counsel further submits that, in its last decision granting an extension of time,³⁹ the Chamber has amended the timetable for the filing of documents such that the parties will now receive the report of the experts *prior* to their additional submissions on reparations. Therefore, the Principal Counsel contends that this enhanced design of the reparations proceedings helps the parties to focus their submissions, reduces the complexity of the exercise and assists time management. Again, this alleviates the work of the Defence.

24. Moreover, the Chamber’s order for additional submissions on reparations was issued on 2 June 2017. It is since then that the parties had the responsibility to prepare their arguments, originally due on 15 September 2017.⁴⁰ The Chamber has

de dépôt de la liste amendée de preuves” (Pre-Trial Chamber I), No. ICC-02/11-01/11-361, 18 January 2013, para. 13.

³⁷ 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, para. 21.

³⁸ See the “Scheduling order for a hearing before the Appeals Chamber”, *supra* note 4, p. 3.

³⁹ See the “Decision on the Defence request for an extension of time to file additional observations for reparations”, *supra* note 3, p. 5.

⁴⁰ This deadline has been extended two times, totalizing a 6 week extension as it falls on 27 November 2017.

granted almost six months for the preparation of said submissions and, therefore, a further extension until 23 January 2018 is not warranted.

25. As noted above, by the time the Chamber granted the last extension of time,⁴¹ the Appeals Chamber had already decided to hold hearings in January 2018.⁴² This notwithstanding, the Defence request for extension to file additional submissions on reparations was only granted partially, for one week. The Principal Counsel considers that this was a sufficient extension of time not least because the scope of the additional submissions on reparations is limited. Indeed, the parties are requested to submit arguments and/or information that they have not yet presented to the Chamber, if any.

26. Similarly, no good cause has been shown to amend the 18 December 2017 deadline to file submissions on “the experts’ report, the submissions of other participants and any other last arguments”.⁴³ In this regard, the Principal Counsel notes that it seems in any case premature to address this request not knowing the content and length of the experts’ report(s).

27. In relation to the opportunity to respond to the arguments of the other parties, the Prosecution, the TFV, the Defence, the LRV and the OPCV filed full-fledged observations on reparations over a year ago, on 31 October 2016.⁴⁴ It is since then that the parties are aware of each other positions and the complexity of this filing must be evaluated in light of this prolonged timeline. Accordingly, a further extension until 20 February 2018 is not warranted.

⁴¹ See the “Decision on the Defence request for an extension of time to file additional observations for reparations”, *supra* note 3, p. 5.

⁴² See the “Scheduling order for a hearing before the Appeals Chamber”, *supra* note 4, p. 3.

⁴³ *Idem*.

⁴⁴ See the “Prosecution’s Observations on Reparations”, No. ICC-01/05-01/08-3454, 31 October 2016; the “Observations relevant to reparations”, No. ICC-01/05-01/08-3457, 31 October 2016; the “Public redacted version of Defence observations on reparations”, No. ICC-01/05-01/08-3458-Red, 1 November 2016; the “Submissions relevant to reparations”, No. ICC-01/05-01/08-3455, 31 October 2016; and 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.

IV. Conclusion

28. For the foregoing reasons, the Principal Counsel respectfully requests the Chamber to dismiss the Defence Further Request *in limine*.

29. In the alternative, the Principal Counsel respectfully requests the Chamber to reject the Request because the Defence has failed to show good cause.

A handwritten signature in black ink, appearing to read 'Paolina Massidda', with a horizontal line drawn underneath the name.

Paolina Massidda

Principal Counsel

Dated this 13th day of November 2017

At The Hague, The Netherlands