

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No.: ICC-01/05-01/08
Date: 10 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 Redress Trust for leave to submit observations pursuant to
Article 75(3) of the Statute and Rule 103 of the Rules**

Source: THE REDRESS TRUST

Document 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

Ms Melinda Taylor

Legal Representatives of the Victims

Ms Marie-Edith Douzima-Lawson

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Mr Nigel Verril

Detention Section

**Victims Participation and Reparations
Section**

Ms Isabelle Guibal

Trust Fund for Victims

Mr Pieter de Baan

I. INTRODUCTION

1. The Redress Trust respectfully seeks leave to file submissions in accordance with Trial Chamber III's 'Order requesting submissions relevant to reparations' of 22 July 2016,¹ pursuant to Article 75(3) of the Statute and Rule 103 of the Rules.

II. PROCEDURAL BACKGROUND

2. On 21 March 2016, the Chamber issued its Judgment pursuant to Article 74 of the Statute.²
3. On 4 April 2016, the defence filed its Notice of Appeal against the Judgment pursuant to Article 74 of the Statute.³
4. On 21 June 2016, the Decision on Sentence pursuant to Article 76 of the Statute was issued.⁴
5. On 22 July 2016, Trial Chamber III issued its 'Order requesting submissions relevant to reparations'.⁵ In this order, Trial Chamber III requested the Legal Representative of Victims and the Defence for Mr Bemba, as well as the Office of the Prosecutor, the Registry and the Trust Fund for Victims to submit observations on a number of issues in order to assist the Chamber:

¹ Situation in The Central African Republic, *The Prosecutor v. Jean-Pierre Bemba Gombo*, 'Order requesting submissions relevant to reparations', ICC-01/05-01/08, 22 July 2016.

² Judgment pursuant to Article 74 of the Statute, 21 March 2016, ICC-01/05-01/08-3343.

³ Defence Notice of Appeal against the Judgment pursuant to Article 74 of the Statute, 4 April 2016, ICC-01/05-01/08-3348.

⁴ Decision on Sentence pursuant to Article 76 of the Statute, 21 June 2016, ICC-01/05-01/08-3399.

⁵ Situation in The Central African Republic, *The Prosecutor v. Jean-Pierre Bemba Gombo*, 'Order requesting submissions relevant to reparations', ICC-01/05-01/08, 22 July 2016.

- 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 of Procedure and Evidence (“Rules”);
 - e) any other issue the parties and participants wish to bring to the attention of the Chamber.
6. In its Order of 22 July 2016, Trial Chamber III invited organisations interested in making submissions on the issues set out above, pursuant to Article 75(3) of the Statute and Rule 103 of the Rules, to request leave from the Chamber by 15 August 2016 to make such submissions.

III. THE APPLICANT

7. The Redress Trust (REDRESS), the Applicant, is an international non-governmental organisation registered in the United Kingdom and with special consultative status with the UN Economic and Social Council (ECOSOC). Its mandate is to seek justice and reparation for victims of torture and related international crimes. It has over 20 years’ expertise in advocating for the rights of victims to gain both access to the courts and redress for their suffering, in over 50 countries worldwide.
8. It is submitted that REDRESS has relevant experience and expertise pertaining to the issues with which Trial Chamber III is confronted. REDRESS has extensive experience in directly representing victims as well as with

interventions before national and international courts and tribunals including, at the international level, the United Nations Committee against Torture, the United Nations Human Rights Committee, the European Court of Human Rights, the Inter-American Commission and Court of Human Rights, the African Commission on Human and Peoples' Rights, the Special Court for Sierra Leone, and the Extraordinary Chambers in the Courts of Cambodia. It has also been granted leave to intervene and has submitted observations in several proceedings before the International Criminal Court.⁶

9. REDRESS is regularly solicited for its expertise on reparations by governments, UN bodies, independent experts, civil society groups and courts. It has conducted in-depth research on reparations for victims of torture and other related international crimes,⁷ including in the African context.⁸ It has made substantive submissions relating to the right to reparation including to the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence⁹ and the Committee against Torture.¹⁰

⁶ *Prosecutor v. Germain Katanga* (Redress Trust observations pursuant to Article 75 of the Statute) ICC-01/04-01/07, 15 May 2015 ; *Prosecutor v Saif Al-Islam Gaddafi and Abdullah Al-Senussi* (Lawyers for Justice in Libya and Redress Trust's Observations pursuant to Rule 103 of the Rules of Procedure and Evidence), ICC-01/11-01/11-172, PTC I, 8 June 2012; *Prosecutor v Laurent Gbagbo* (Redress Trust Observations to Pre-Trial Chamber I of the International Criminal Court Pursuant to Rule 103 of the Rules of Procedure and Evidence) ICC-02/11-01/11-62, PTC I, 16 March 2012; *Prosecutor v Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen* (Amicus Curiae submitted pursuant to the Pre-Trial Chamber II "Decision on application for leave to submit observations under Rule 103" dated 5 November 2008), ICC-02/04-01/05-353, PTC II, 18 November 2009.

⁷ Carla Ferstman, Mariana Goetz and Alan Stephens (eds), *Reparations for Genocide, War Crimes and Crimes Against Humanity: Systems in Place and Systems in the Making*, Martinus Nijhoff 2009; Carla Ferstman, *Responding to the Introduction of Cholera to Haiti: Policy Options*, REDRESS, June 2016; REDRESS, *REPARATION FOR TORTURE: A Survey of Law and Practice in Thirty Selected Countries*, 2003.

⁸ *Reaching for Justice: The Right to Reparation in the African Human Rights System*, REDRESS, October 2013.

⁹ *Articulating Minimum Standards on Reparations Programmes in Response to Mass Violations*, Submission to the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, REDRESS, July 2014.

¹⁰ REDRESS submission on CAT draft General Comment on Article 14, REDRESS, September 2011.

IV. SPECIFIC ISSUES THE APPLICANT SEEKS TO ADDRESS

10. REDRESS seeks to provide observations on the following issues.

- a) Having regard to the principles established by the Appeals Chamber in the *Lubanga* case (“the *Lubanga* Principles”), REDRESS would provide information and analysis on whether, in light of i) the number of the potential beneficiaries; ii) the locations of the potential beneficiaries; iii) the current humanitarian context in which many potential beneficiaries find themselves in, the particular circumstances of this case warrant any adaptation, modification or clarification of the *Lubanga* Principles. REDRESS would also provide information and analysis on ways in which the Trial Chamber may monitor and assure the proper implementation of those principles, including by those to whom it may delegate certain tasks relating to the implementation of its order;
- b) Consideration of whether and if so, how, 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, may take into account issues such as the potential large numbers of victims and extensive suffering;
- c) Methodologies that the Chamber might employ to determine 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. In this respect, REDRESS would not seek to offer the Chamber any observations on what the Chamber should ultimately award but in contrast would focus on the types of factors the Chamber could usefully

take into account, and methodologies it could follow, when determining an appropriate award.

- d) Provide guidance on the role experts could play in assisting the Court with the abovementioned issues, including by providing detailed harm and reparation needs assessments on a consultation-based approach. These observations would draw on comparative experience from other claims procedures.

11. REDRESS intends to focus on providing the Chamber with examples of how other international, regional and national courts and quasi- or non-judicial bodies have dealt with similar issues. Where factual assumptions are necessary in order to provide observations on reparations issues relevant to this particular case, REDRESS will state those assumptions and the evidence on which they are based. REDRESS takes no position on any facts in dispute before the Chamber and does not represent any party to the proceedings.

12. In light of the case-specific observations sought by Trial Chamber III in its Order of 22 July 2016, if leave is granted it would be to the benefit of REDRESS' ability to assist the Court if the date for filing the submission allowed REDRESS sufficient time to consider information contained in the filings ordered to be made by 15 September 2016.

V. THE APPLICATION

13. Article 75(3) of the Statute provides that 'before making an order [for reparation] under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.'

14. Trial Chamber I in the *Lubanga* case ruled that organisations may request to file submissions under Art 75(3) and that ‘[t]he central matter to be determined [...] is whether the Chamber will be assisted in its proper determination of the issues identified [...] by receiving submissions from the [organisations].’¹¹
15. The specific issues that REDRESS seeks to address in its observations are among those set out by Trial Chamber III in its ‘Order requesting submissions relevant to reparations’ of 22 July 2016.
16. As set out in the previous section, REDRESS has particular expertise in relation to reparations for victims of crimes falling within the mandate of the Court. It has conducted research and practical activities in this field that are directly relevant to the issues it wishes to address in its submission and is thus well placed to assist the Chamber in relation to the issues identified.

ACCORDINGLY, REDRESS respectfully requests that the Chamber grant leave to submit observations.

Carla Ferstman
Director, REDRESS

Dated this 10 August 2016

At London, United Kingdom

¹¹ Decision granting leave to make representations in the reparations proceedings, 20 April 2012, ICC-01/04-01/06-2870, at Para 17.