

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 21 September 2012

**TRIAL CHAMBER III**

**Before: Judge Sylvia Steiner, Presiding Judge  
Judge Joyce Aluoch  
Judge Kuniko Ozaki**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC  
IN THE CASE OF  
THE PROSECUTOR  
*v. JEAN-PIERRE BEMBA GOMBO***

**Public Document**

**Decision giving notice to the parties and participants that the legal  
characterisation of the facts may be subject to change in accordance with  
Regulation 55(2) of the Regulations of the Court**

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

**The Office of the Prosecutor**

Ms Fatou Bensouda

Ms Petra Kneuer

**Counsel for the Defence**

Mr Aimé Kilolo Musamba

Mr Peter Haynes

**Legal Representatives of the Victims**

Ms Marie Edith Douzima-Lawson

Mr Assingambi Zarambaud

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for Participation/Reparation**

**The Office of Public Counsel for Victims**

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

**States Representatives**

**Amicus Curiae**

**Registrar**

Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Section**

**Other**

Trial Chamber III (“Chamber”) of the International Criminal Court in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* issues the following Decision giving notice to the parties and participants that the legal characterisation of the facts may be subject to change in accordance with Regulation 55(2) of the Regulations of the Court (“Regulations”).

1. On 15 June 2009, Pre-Trial Chamber II delivered its “Decision Pursuant to Article 61(7)(a) and (b) of the Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo” (“Decision on the Confirmation of Charges”),<sup>1</sup> in which it found that there was “sufficient evidence to establish substantial grounds to believe that Mr Jean-Pierre Bemba knew that MLC troops were committing or were about to commit [...] crimes from on or about 26 October 2002 to 15 March 2003.”<sup>2</sup> On this basis, Pre-Trial Chamber II confirmed the charges against Mr Bemba pursuant to Article 28(a) of the Rome Statute (“Statute”), for the crimes of murder as a crime against humanity and as a war crime, rape as a crime against humanity and as a war crime and pillaging as a war crime, within the meaning of Articles 7(1)(a), 7(1)(g), 8(2)(c)(i), 8(2)(e)(vi) and 8(2)(e)(v) of the Statute.<sup>3</sup> The Pre-Trial Chamber did not consider the “should have known” standard set out as an alternative in Article 28(a)(i) of the Statute.
2. In making the present ruling, the Chamber has considered, in accordance with Article 21(1) of the Statute, Articles 28(a), 30, 64(2), 67(1)(a) and (b), and 74 of the Statute and Regulations 34 and 55 of the Regulations of the Court.
3. The Chamber notes that under Regulation 55 of the Regulations, it may change, in its decision under Article 74 of the Statute, the legal

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<sup>1</sup> Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, ICC-01/05-01/08-424.

<sup>2</sup> ICC-01/05-01/08-424, paragraph 478.

<sup>3</sup> ICC-01/05-01/08-424, pages 184 and 185. See Decision on the defence application for corrections to the Document Containing the Charges and for the prosecution to file a Second Amended Document Containing the Charges, 20 July 2010, ICC-01/05-01/08-836, paragraph 121.

characterisation of the facts to accord with the form of participation of the accused under Article 28, without exceeding the facts and circumstances described in the charges and any amendment to the charges. Regulation 55 provides as follows:

**Regulation 55**

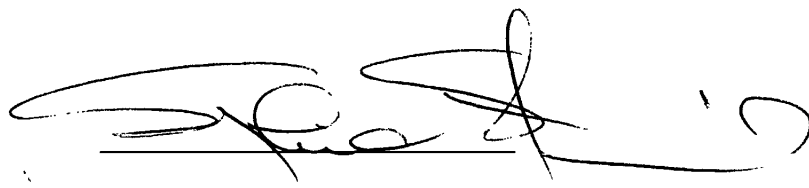
**Authority of the Chamber to modify the legal characterisation of facts**

1. In its decision under article 74, the Chamber may change the legal characterisation of facts to accord with the crimes under articles 6, 7 or 8, or to accord with the form of participation of the accused under articles 25 and 28, without exceeding the facts and circumstances described in the charges and any amendments to the charges.
2. If, at any time during the trial, it appears to the Chamber that the legal characterisation of facts may be subject to change, the Chamber shall give notice to the participants of such a possibility and having heard the evidence, shall, at an appropriate stage of the proceedings, give the participants the opportunity to make oral or written submissions. The Chamber may suspend the hearing to ensure that the participants have adequate time and facilities for effective preparation or, if necessary, it may order a hearing to consider all matters relevant to the proposed change.
3. For the purposes of sub-regulation 2, the Chamber shall, in particular, ensure that the accused shall:
  - (a) Have adequate time and facilities for the effective preparation of his or her defence in accordance with article 67, paragraph 1 (b); and
  - (b) If necessary, be given the opportunity to examine again, or have examined again, a previous witness, to call a new witness or to present other evidence admissible under the Statute in accordance with article 67, paragraph 1 (e).
4. Although in accordance with Regulation 55(1) of the Regulations, any change in the legal characterisation of the facts is ultimately made in the Chamber's decision under Article 74 of the Statute, pursuant to Regulation 55(2) of the Regulations if it appears to the Chamber, at any time during the trial, that the legal characterisation of the facts may be subject to change, the Chamber must give notice to the parties and participants of this possibility.
5. The Chamber hereby gives notice to the parties and participants that, pursuant to Regulation 55(2) of the Regulations, after having heard all the

evidence the Chamber may modify the legal characterisation of the facts so as to consider in the same mode of responsibility the alternate form of knowledge contained in Article 28(a)(i) of the Statute, namely that owing to the circumstances at the time, the accused “should have known” that the forces under his effective command and control or under his effective authority and control, as the case may be, were committing or about to commit the crimes included in the charges confirmed in the Decision on the Confirmation of Charges.

6. The Chamber instructs the Office of the Prosecutor and the legal representatives of victims to file any submissions on the procedural impact of the present notification by 8 October 2012. Thereafter, the Chamber instructs the defence to file its submissions, including any response to the submissions of the prosecution and the legal representatives of victims, within 10 days, that is, by 18 October 2012 at the latest.

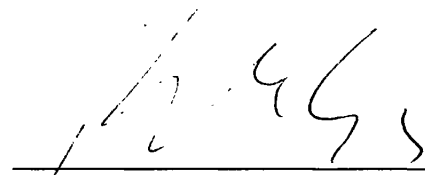
Done in both English and French, the English version being authoritative.



**Judge Sylvia Steiner**



**Judge Joyce Aluoch**



**Judge Kuniko Ozaki**

Dated this 21 September 2012

At The Hague, The Netherlands