

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 19 November 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

**Decision requesting the defence to provide further information on the
procedural impact of the Chamber's notification pursuant to 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 requesting the defence to provide further information on the procedural impact of the Chamber’s notification pursuant to Regulation 55(2) of the Regulations of the Court (“Decision”).

1. On 21 September 2012, the Chamber issued its “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”¹ (“Regulation 55 Notification”), in which it gave notice to the parties and participants that the Chamber may modify the legal characterisation of the facts.² The potential change envisaged by the Chamber was the possibility of considering, pursuant to Regulation 55 of the Regulations of the Court (“Regulations”): “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 on the decision on the Confirmation of Charges.”³ The Chamber further requested the parties and participants to make submissions on the procedural impact of the notification.⁴ No request for leave to appeal this decision was lodged by any of the parties or participants.

2. On 8 October 2012, the prosecution filed its “Prosecution’s Submission on the Procedural Impacts of Trial Chamber’s Notification pursuant to Regulation

¹ 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, 21 September 2012, ICC-01/05-01/08-2324.

² ICC-01/05-01/08-2324, paragraphs 4-5.

³ ICC-01/05-01/08-2324, paragraph 5.

⁴ ICC-01/05-01/08-2324, paragraph 6.

55(2) of the Regulations of the Court”,⁵ in which it submits that (i) the Chamber’s Regulation 55 Notification has no impact on the Office of the Prosecutor’s (“prosecution”) case; (ii) the prosecution’s theory of the case is consistent with the possible change to the legal characterisation of the facts; and (iii) the same evidence presented by the prosecution to prove that the accused had actual knowledge also proves that “owing to the circumstances at the time he should have known”.⁶ The prosecution further emphasises that during the presentation of its case it led evidence on its relevant allegations – and the defence examined and challenged the prosecution’s witnesses on these facts – including the coverage by the international media of the crimes committed by the *Mouvement de Libération du Congo* (“MLC”), the visits by the accused to the Central African Republic during the relevant timeframe, the MLC’s reporting system and the MLC’s alleged communication system.⁷

3. On 3 and 8 October 2012, the legal representatives of victims filed their submissions.⁸ Mr Zarambaud submits, *inter alia*, that such a possible change is in the interests of victims.⁹ Ms Douzima argues, *inter alia*, that it is in the Chamber’s powers to change the legal characterisation of the facts.¹⁰ However, neither of them raised any procedural issues arising out of the Chamber’s Regulation 55 Notification.
4. On 18 October 2012, the defence filed its “Defence Submissions on the Trial Chamber’s Notification under Regulation 55(2) of the Regulations of the

⁵ Prosecution’s Submission on the Procedural Impacts of Trial Chamber’s Notification pursuant to Regulation 55(2) of the Regulations of the Court, 8 October 2012, ICC-01/05-01/08-2334.

⁶ ICC-01/05-01/08-2334, paragraph 13.

⁷ ICC-01/05-01/08-2334, paragraphs 10 and 18.

⁸ Observations du Représentant légal Maître Zarambaud Assingambi su la décision de la Chambre de première instance III du 21 septembre 2012 signalant aux parties et aux participants que la qualification juridique des faits pourrait faire l’objet de modification, conformément à la norme 55-2 du Règlement de la Cour (ICC-01/05-01/08), 3 October 2012, ICC-01/05-01/08-2328-Conf ; and Observations de la Représentante légale de victimes sur la décision de la Chambre de première instance III du 21 septembre 2012, 9 October 2012, ICC-01/05-01/08-2335-Conf.

⁹ ICC-01/05-01/08-2328-Conf, paragraph 4.

¹⁰ ICC-01/05-01/08-2335-Conf, page 4.

Court”,¹¹ in which it raises a number of substantive objections to a possible change of the legal characterisation of the facts. On the procedural impact, the defence submits that, at a minimum, the envisaged change may require (i) recalling prosecution witnesses; (ii) being provided with a detailed notice of the relevant material facts; (iii) further defence investigations; (iv) additional time to identify an interview potential witnesses; (v) further requests for assistance from various governments and/or organisations; (vi) additional disclosure requests from the prosecution; and (vii) a meaningful period of time to investigate and prepare.¹² The defence further urged the Chamber to “render a reasoned decision in a timely fashion in order to minimize the impact of the issue upon the continuing process.”¹³

5. In making this ruling, the Chamber has considered, in accordance with Article 21(1) of the Rome Statute (“Statute”), Articles 64(2), 66(2), 67(1) and 74(2) of the Statute and Regulations 28 and 55 of the Regulations.
6. At the outset, the Chamber notes that, as previously emphasised and according to the relevant legal provisions, a change of the legal characterisation of the facts, if any, will ultimately made by the Chamber at the time of issuing the decision under Article 74 of the Statute.¹⁴ Consequently, the present Decision will only deal with the procedural impact of the Regulation 55 Notification on the trial proceedings.
7. That notwithstanding, and taking into account the defence’s request to be provided with detailed notice of the relevant material underlying facts supporting a change to the legal characterisation, the Chamber reiterates that such a change, if any, would only be made without exceeding the facts and

¹¹ Defence Submissions on the Trial Chamber’s Notification under Regulation 55(2) of the Regulations of the Court, 18 October 2012, ICC-01/05-01/08-2365-Conf.

¹² ICC-01/05-01/08-2365-Conf, paragraphs 29 and 42.

¹³ ICC-01/05-01/08-2365-Conf, paragraph 51.

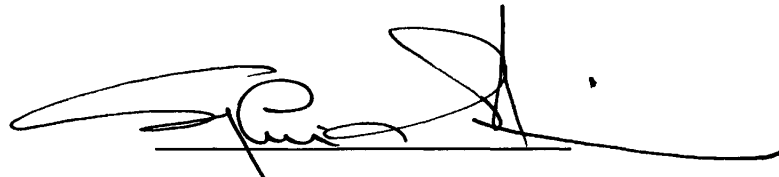
¹⁴ ICC-01/05-01/08-2324, paragraph 4.

circumstances described in the charges, as confirmed by the Pre-Trial Chamber. In addition, the Chamber stresses that the prosecution, which bears the onus of proving the guilt of the accused beyond reasonable doubt, has already submitted that the possible change would have no impact on the prosecution case and that, in the view of the prosecution, “[t]he same evidence presented by the Prosecution to prove that [the accused] had actual knowledge also proves that the accused, “owing to the circumstances at the time, should have known.”¹⁵

8. In the present circumstances, in order to give the defence the necessary time and facilities for its preparations and to provide it with the opportunity to question previous witnesses or present new evidence, if required, pursuant to Regulation 55(2) and (3) of the Regulations, the Chamber needs to be provided with more concrete information and relevant justifications, in particular in relation to (i) which prosecution witnesses the defence would intend to recall; and (ii) the envisaged time needed for further defence investigations and preparations.
9. For the above reasons, the Chamber orders the defence to provide, in as much detail as possible, the information and relevant justifications referred to in paragraph 8 above, by 30 November 2012 at the latest. The opportunity to make substantive submissions on the proposed potential change will be given in due course, as the case may be, after having heard the evidence in accordance with Regulation 55(2) of the Regulations.

¹⁵ ICC-01/05-01/08-2334, paragraph 13.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 19 November 2012

At The Hague, The Netherlands