

**Cour
Pénale
Internationale**



**International
Criminal
Court:**

Original: English

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

Date: 29 January 2013

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 shortening the time for observations and requesting further
information on the Defence Motion ICC-01/05-01/08-2490-Red**

Decision 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 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

Ms 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 shortening the time for observations and requesting further information on the Defence Motion ICC-01/05-01/08-2490-Red (“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” (“Regulation 55 Notification”).¹ The Chamber informed the parties and participants that – after having heard all the evidence and when making its decision under Article 74 of the Rome Statute (“Statute”) – the Chamber may modify the legal characterisation of the facts pursuant to Regulation 55 of the Regulations of the Court (“Regulations”).² The Chamber envisaged as possible change “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.”³ The Chamber further requested the parties and participants to make submissions on the procedural impact of the notification.⁴ No leave to appeal was sought by any of the parties or participants in relation to this Regulation 55 Notification.

2. On 8 October 2012, the Office of the Prosecutor (“prosecution”) filed its “Prosecution’s Submission on the Procedural Impacts of Trial Chamber’s

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 and 5.

³ ICC-01/05-01/08-2324, paragraph 5.

⁴ ICC-01/05-01/08-2324, paragraph 6.

Notification pursuant to Regulation 55(2) of the Regulations of the Court” (“Prosecution’s Submission”),⁵ in which it submitted that the Chamber’s Regulation 55 Notification has no impact on the prosecution case.⁶

3. On 18 October 2012, the defence for Mr Jean-Pierre Bemba (“defence”) filed its “Defence Submissions on the Trial Chamber’s Notification under Regulation 55(2) of the Regulations of the Court”,⁷ in which it raised a number of substantive objections to a possible change of the legal characterisation of the facts. On the procedural impact, the defence submitted 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 and 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.⁸

4. On 19 November 2012, the Chamber issued its “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”,⁹ in which it requested the defence to provide concrete information and relevant justifications 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.¹⁰ In its decision, the Chamber

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 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. A public redacted version of this document was filed on the same day.

⁸ ICC-01/05-01/08-2365-Red, paragraphs 29 and 42.

⁹ 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, 19 November 2012, ICC-01/05-01/08-2419.

¹⁰ ICC-01/05-01/08-2419, paragraph 8.

emphasised once again that a change to the legal characterisation of the facts, if any, would ultimately be made by the Chamber at the time of issuing the decision under Article 74 of the Statute.¹¹ Further, it reiterated that such a possible change in the legal characterisation of the facts would only be made without exceeding the facts and circumstances described in the charges, as confirmed by the Pre-Trial Chamber.¹² No leave to appeal was sought by any of the parties or participants in relation to this Decision.

5. On 30 November 2012, the defence filed its “Defence further submission on the notification under Regulation 55(2) of the Regulations of the Court and Motion for notice of material facts and circumstances underlying the proposed amended charge” (“Defence’s Additional Submission”),¹³ in which, *inter alia*, it requested the Chamber to provide further details of the material facts and circumstances upon which it intends to rely on for the proposed re-characterisation under Regulation 55 of the Regulations.¹⁴ In addition, in its confidential *ex parte* Annex A,¹⁵ the defence anticipated the need for further investigations and preparation, identified a number of prosecution witnesses that it would require to recall,¹⁶ and anticipated calling a number of additional witnesses. The defence further argued that it required “an additional six (6) to nine (9) months investigation and preparation”, in order to undertake further investigations, interview potential witnesses and others with relevant information, and to initiate further requests for assistance from various governments and/or organisations and/or press bodies, to review and gather

¹¹ ICC-01/05-01/08-2419, paragraph 6.

¹² ICC-01/05-01/08-2419, paragraph 7.

¹³ Defence further submission on the notification under Regulation 55(2) of the Regulations of the Court and Motion for notice of material facts and circumstances underlying the proposed amended charge, 30 November 2012, ICC-01/05-01/08-2451-Conf-Exp, with Public Redacted Version ICC-01/05-01/08-2451-Red and confidential *ex parte* defence only Annex A ICC-01/05-01/08-2451-Conf-Exp-AnxA.

¹⁴ ICC-01/05-01/08-2451-Red, paragraph 34.

¹⁵ ICC-01/05-01/08-2451-Red, paragraph 33 and ICC-01/05-01/08-2451-Conf-Exp-AnxA. The Chamber notes that the present decision refers to matters addressed in the context of that confidential *ex parte* Annex. While some of the matters referred therein should remain *ex parte* at this stage, the Chamber is of the view that in light of the principle of publicity of the proceedings enshrined in Articles 64(7) and 67(1) of the Statute, this Decision makes reference to information that the Chamber considers not to warrant *ex parte* treatment at this time.

¹⁶ ICC-01/05-01/08-2451-Conf-Exp-AnxA, paragraph 3.

relevant material.¹⁷ The defence stressed that the time requested was calculated on the basis that the current proceedings were suspended for the entirety of this phase of investigations.¹⁸

6. On 13 December 2012, the Chamber issued its “Decision on the temporary suspension of the proceedings pursuant to Regulation 55(2) of the Regulations of the Court and related procedural deadlines” (“Suspension Decision”),¹⁹ in which it stressed that the facts and circumstances, as well as the evidence submitted in order to prove them were exactly the same and that there was no new ‘case to answer’, as alleged by the defence.”²⁰ Taking into account the Defence’s Additional Submissions, but striking a balance between the need to ensure adequate time and facilities for effective preparation of the defence while ensuring that the trial is fair and expeditious and that the accused is tried without undue delay, it decided to suspend the trial proceedings for two and a half months and requested the defence to provide the list of the witnesses it intended to recall and that of additional witnesses or other additional evidence.

7. On 18 December 2012, the defence filed its “Defence Request for Leave to Appeal the Decision on the Temporary Suspension of the Proceedings Pursuant to Regulation 55(2) of the Regulations of the Court and related Procedural Deadlines” (“Leave to Appeal”).²¹ The defence argued that in the Suspension Decision “the Chamber interpreted and applied Regulation 55 in a manner inconsistent with the text of the provision and, therefore, without a valid legal basis [in so far as] the course envisaged by the Chamber goes well

¹⁷ ICC-01/05-01/08-2451-Conf-Exp-AnxA, paragraph 5.

¹⁸ ICC-01/05-01/08-2451-Conf-Exp-AnxA, paragraph 6.

¹⁹ Decision on the temporary suspension of the proceedings pursuant to Regulation 55(2) of the Regulations of the Court and related procedural deadlines, 13 December 2012, ICC-01/05-01/08-2480.

²⁰ ICC-01/05-01/08-2480, paragraph 12.

²¹ Defence Request for Leave to Appeal the Decision on the Temporary Suspension of the Proceedings Pursuant to Regulation 55(2) of the Regulations of the Court and related Procedural Deadlines, 18 December 2012, ICC-01/05-01/08-2483-Conf-Exp. Pursuant to Trial Chamber III’s instruction, dated 20 December 2012, this document was reclassified as Confidential. A public redacted version of this document was filed on the same day (ICC-01/05-01/08-2483-Red).

beyond [a legal re-characterisation of facts] by adding a new set of facts and factual allegations to the charges” (“First Issue”);²² and that it “failed to apply Regulation 55 in a manner consistent with the Statute” (“Second Issue”), therefore violating a series of rights of the accused (“Sub-issues 1 to 6”).²³

8. On 21 December 2012, the prosecution filed its response to the Leave to Appeal urging the Chamber to reject the request on the basis that the issues identified by the defence did not arise from the Suspension Decision.²⁴

9. On 11 January 2013, the Chamber issued its “Decision on ‘Defence Request for Leave to Appeal the Decision on Temporary Suspension of the Proceedings Pursuant to Regulation 55(2) of the Regulations of the Court and related Procedural Deadlines’”,²⁵ in which it denied the Leave to Appeal. In relation to the First Issue the Chamber found that it did not arise from the Suspension Decision, since in that decision – as well as in all the previous decisions on the matter – the Chamber made it abundantly clear that the proposed re-characterisation would not exceed the facts and circumstances as set out in the charges and any amendment thereto.²⁶ In relation to Sub-issues 1 to 6 of the Second Issue, the Chamber found that they did not constitute specific appealable issues arising from the Suspension Decision.²⁷

10. On 28 January 2013, the defence filed its “Defence Motion to Vacate Trial Chamber’s ‘Decision on the temporary suspension of the proceedings’ of 13 December 2012 and Notification Regarding the Envisaged Re-Qualification of

²² ICC-01/05-01/08-2483-Red, paragraph 20(i).

²³ ICC-01/05-01/08-2483-Red, paragraph 20(ii)(a) – (f).

²⁴ Prosecution’s Response to “Defence Request for Leave to Appeal the Decision on the Temporary Suspension of the Proceedings Pursuant to Regulation 55(2) of the Regulations of the Court and Related Procedural deadlines” (ICC-01/05-01/08-2483-Red), 21 December 2012, ICC-01/05-01/08-2484.

²⁵ Decision on “Defence Request for Leave to Appeal the Decision on Temporary Suspension of the Proceedings Pursuant to Regulation 55(2) of the Regulations of the Court and related Procedural Deadlines”, 11 January 2013, ICC-01/05-01/08-2487-Conf and Public Redacted Version ICC-01/05-01/08-2487-Red.

²⁶ ICC-01/05-01/08-2487-Red, paragraph 19.

²⁷ ICC-01/05-01/08-2487-Red, paragraph 33 and 35.

Charges Pursuant to Regulation 55” (“Defence Motion”),²⁸ in which it renounces the rights granted by the Suspension Decision. In particular the defence (i) informs the Chamber that it will not be requesting to re-call any prosecution witnesses or seeking to call any additional evidence; (ii) declines to conduct any effective additional investigation; and (iii) requests that the trial re-commence as soon as possible.²⁹ In addition, the defence reiterates its wish to call all witnesses currently on its list and announces that it will propose a group of witnesses it wishes to call as a priority in order to ensure an efficient presentation of evidence.³⁰

11. For the purpose of the present Decision, the Chamber has considered, in accordance with Article 21(1) of the Statute, Articles 64(2), 64(3)(a), 67(1)(c), 67(1)(e) of the Statute and Regulations 24(1) and (2), 28, 34 and 35 of the Regulations of the Court.

12. Pursuant to the *chapeau* of Regulation 34 of the Regulations, a time limit for responses to a document other than the 21 days provided for in paragraph (b), may be fixed by the Chamber. To assist the Chamber’s prompt determination on the Defence Motion, the time limit for the filing of responses needs to be reduced.

13. Based on the defence’s intention to propose a group of witnesses that it wishes to call as priority, and taking into account the series of difficulties encountered so far with the appearance of the witnesses called by defence,³¹ before deciding on the Defence Motion the Chamber needs to be provided by the defence with the list of witnesses it intends to call as a priority and, in

²⁸ Defence Motion to Vacate Trial Chamber’s “Decision on the temporary suspension of the proceedings” of 13 December 2012 and Notification Regarding the Envisaged Re-Qualification of Charges Pursuant to Regulation 55, 28 January 2013, ICC-01/05-01/08-2490-Conf and Public Redacted Version ICC-01/05-01/08-2490-Red.

²⁹ ICC-01/05-01/08-2490-Red, paragraph 24.

³⁰ ICC-01/05-01/08-2490-Red, paragraph 23.

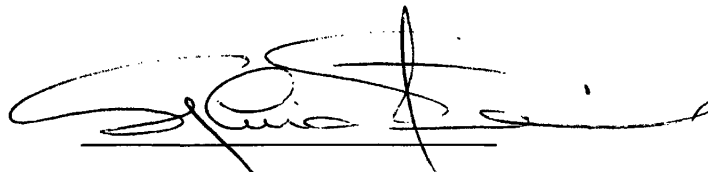
³¹ See, *inter alia*, Decision on measures to facilitate the continued presentation of evidence by the defence, 14 December 2012, ICC-01/05-01/08-2482-Red.

coordination with the Victims and Witnesses Unit (“VWU”), with the concrete and precise dates when – considering all the necessary arrangements – the proposed witnesses would be able to appear before the Chamber.

14. In view of the foregoing, the Chamber hereby:

- (i) orders the prosecution and the legal representatives of victims to file, by no later than 16.00 on 30 January 2013, their responses to the Defence Motion, if any; and
- (ii) orders the defence to submit no later than 16.00 on 31 January 2013, the list of witnesses it intends to call as a priority, indicating, in coordination with the VWU, a concrete and precise schedule for the appearance of the proposed witnesses.

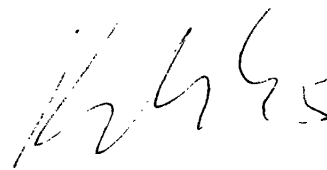
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 29 January 2013

At The Hague, The Netherlands