

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: **9 November 2011**

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**

Confidential Document

Prosecution's Request for leave to reply to "Defence Response to Prosecution Further Revised Submissions on Scheduling"

Source: The Office of the Prosecutor

Document to be notified in accordance with Regulation 31 of the *Regulations of the Court*
to:

The Office of the Prosecutor

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**Unrepresented Applicants for
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**Victims Participation and Reparations Other
Section**

1. Pursuant to Regulation 24(5) of the Regulations of the Court ("Regulations"), the Office of the Prosecutor ("Prosecution") requests authorisation of Trial Chamber III ("Chamber") to submit a very brief reply to "Defence Response to Prosecution Further Revised Submissions on Scheduling" ("Defence Response"),¹ addressing only the Defence proposal that Prosecution Witness CAR-OTP-PPPP-0069 ("Witness 69") testify before 16 December 2011. This new issue was neither prompted by the Chamber's order nor the Prosecution's Request to which the Defence responded.²

2. The Prosecution requests that this document be received as "Confidential" as it contains details regarding scheduling and other information of some witnesses for whom the Prosecution has requested protective measures.³ This information is known to the Defence and participants but not to the public.

3. On 27 October 2011, the Chamber requested the Prosecution to provide information regarding the availability of Witnesses CAR-OTP-PPPP-0036 ("Witness 36") or CAR-OTP-PPPP-0045 ("Witness 45"), or both, to testify before Witness CAR-OTP-PPPP-0213 ("Witness 213") or between Witnesses 213 and CAR-OTP-PPPP-0219 ("Witness 219"), including the specific dates on which they can testify ("Order").⁴ Further, the Chamber expressly ruled that it would defer its decision on whether Witnesses CAR-OTP-PPPP-0015 ("Witness 15"), CAR-OTP-PPPP-0044 ("Witness 44") and Witness 69 may testify after the judicial recess.⁵

4. On 2 November 2011, the Prosecution responded to the Chamber's request and asked that the Chamber allow Witness 45 to testify on 9 January 2012, provided an update on two witnesses

¹ ICC-01/05-01/08-1893-Conf., Defence Response to Prosecution Further Revised Submissions on Scheduling, 8 November 2011.

² ICC-01/05-01/08-1874-Conf, Prosecution's Response regarding the Witness Schedule, 2 November 2011.

³ ICC-01/05-01/08-800-Conf-Exp-Corr+Conf-Exp-AnxA-Corr+AnxI, Corrigendum to Prosecution's Request for Protective and Special Measures for Prosecution Witnesses at Trial, 24 June 2010, and ICC-01/05-01/08-1743-Conf, Prosecution's Request for Protective and Special Measures for Witnesses CAR-OTP-PPPP-0015, CAR-OTP-PPPP-0032, CAR-OTP-PPPP-0036, CAR-OTP-PPPP-0044, CAR-OTP-PPPP-0045 at Trial, 13 September 2011.

⁴ ICC-01/05-01/08-T-176-CONF-ENG ET, 27 October 2011, p. 5, lines 4 to 9.

⁵ ICC-01/05-01/08-T-176-CONF-ENG ET, 27 October 2011, p. 5, lines 11 to 16.

with similar circumstances (Witnesses 15 and 44),⁶ and addressed Witness 36's ability to testify, including the proposed dates and manner of testifying.⁷

5. On 8 November 2011, the Defence filed its Response to the Prosecution's Request. It noted the absence of Witness 69 from the Prosecution's Request and proposed that Witness 69 testify immediately after Witness 213, before the recess commencing on 16 December 2011. Neither the Chamber nor the Prosecution had addressed the possibility of Witness 69 testifying prior to the judicial recess.

6. The request that Witness 69 testify prior to the judicial recess is, accordingly, a new issue raised by the Defence for which the Prosecution has not had the opportunity to respond. The proposal impacts the Prosecution's strategy in presenting its case to prove the charges against the Accused. The Prosecution's reply to this new issue, including its rationale for scheduling Witness 69 as its last witness, would assist the Chamber to reach a decision.

7. The Prosecution accordingly seeks leave pursuant to Regulation 24(5) of the Regulations to file a brief reply to the Defence Response to address this single new issue. If leave is granted, the Prosecution can file its reply the same day.



Luis Moreno-Ocampo, Prosecutor

Dated this 9th Day of November 2011

At The Hague, The Netherlands

⁶ The Prosecution had initially informed the Chamber, Defence and participants of the circumstances surrounding the availability of Witnesses 15 and 44 via email to the Legal Officer on 26 August 2011 at 09:31.

⁷ ICC-01/05-01/08-1874-Conf, at para. 17.