

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 27 January 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***

**URGENT  
Public**

**Decision on court sitting hours for the testimony of Witness 45**

**Decision 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 Nkwebe Liriss

Mr Aimé Kilolo Musamba

**Legal Representatives of the Victims**

Mr Assingambi Zarambaud

Ms Marie-Édith Douzima-Lawson

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for Participation/Reparation**

**The Office of Public Counsel for Victims**

Ms Paolina Massidda

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

**States Representatives**

**Amicus Curiae**

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**REGISTRY**

**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

Ms Maria Luisa Martinod Jacome

**Detention Section**

**Victims Participation and Other  
Reparations Section**

Trial Chamber III (“Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, (“Bemba case”) issues the following Decision on court sitting hours for the testimony of Witness 45.

## **I. Background and Submissions**

1. On 26 January 2012, the Office of the Prosecutor (“prosecution”) filed its “Prosecution request for additional sitting hours to hear the testimony of Witness CAR-OTP-PPPP-0045”<sup>1</sup> (“Request”), relying on Articles 64(2) and 64(f) (sic) of the Rome Statute (“Statute”) and in order to hear the testimony of Witness CAR-OTP-PPPP-0045 (“Witness 45”) expeditiously and without interrupting the current witness schedule.<sup>2</sup> The prosecution was instructed to file a confidential redacted version of its Request, which was done on 27 January 2012.<sup>3</sup>
2. Due to conflicting court schedules for Witnesses 45 and 44,<sup>4</sup> the prosecution proposes that the testimony of Witness 45 starts on Sunday 29 January 2012 with the Court sitting for three sessions of two hours each, or four sessions of one hour thirty each (“First Proposal”),<sup>5</sup> or that the Court sits as of Monday 30 January 2012 “with the Court sitting four days that week (30 January to 2 February) in three sessions of two hours each or four sessions of one hour and thirty minutes each (“Second Proposal”). The total of six additional hours over four days, which essentially amounts to a little more than one extra court day, will allow Witness 45 to complete his testimony on 1 February 2012; Witness 44 then would commence his testimony on 2 February instead of 1

<sup>1</sup> Prosecution request for additional sitting hours to hear the testimony of Witness CAR-OTP-PPPP-0045, 26 January 2012, ICC-01/05-01/08-2068-Conf-Exp.

<sup>2</sup> ICC-01/05-01/08-2068-Conf-Exp, paragraph 1.

<sup>3</sup> Email from the Assistant Legal Officer to the Chamber to the prosecution Trial Lawyer on 26 January 2012 at 19:03 and ICC-01/05-01/08-2068-Red.

<sup>4</sup> ICC-01/05-01/08-2068-Red, paragraph 9.

<sup>5</sup> ICC-01/05-01/08-2068-Red, paragraphs 10 and 11.

February, but the Court would make up the time lost through the additional sitting hours.”<sup>6</sup>

3. On 27 January 2012, upon instruction by the Chamber,<sup>7</sup> the defence, the legal representatives and the Registry filed their responses to the prosecution’s proposals. Mr Zarambaud<sup>8</sup> and Ms Douzima,<sup>9</sup> the legal representatives of the victims, favor the Second Proposal.
4. On the same day, the defence filed its response (“Response”) which opposes the prosecution’s Request.<sup>10</sup> According to it, the only justification for amending the sitting schedule is to “minimise the inconvenience to [W]itness 44”. This justification does not warrant changing the sitting hours as proposed. It submits that the current situation with Witness 44 who may have to wait before testifying is not exceptional and was foreseeable by the prosecution.
5. The Registry filed a report in response to the prosecution’s Request,<sup>11</sup> in which it highlights the difficulties of implementation of the First and Second Proposals, mainly due to “budgetary implications”, and it submits an alternative proposal (“Alternative Proposal”).<sup>12</sup> The Registry proposes that the Chamber sits an extra day on Friday 3 February 2012 and sits three sessions per day from Monday 29 January to Wednesday 1 February 2012: two

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<sup>6</sup> ICC-01/05-01/08-2068-Red, paragraph 12.

<sup>7</sup> Email from the Assistant Legal Officer to the Chamber to the Registry, parties and participants on 26 January 2012 at 19:17 and email from the Legal Adviser to the Trial Division to the Registry on 27 January 2011, at 10:09.

<sup>8</sup> Observations de Maître Zarambaud Assingambi relatives à la version confidentielle expurgée « Prosecution request for additional sitting hours to hear the testimony of Witness CAR-OTP-PPPP-0045 », 27 January 2012, ICC-01/05-01/08-2069-Conf, paragraph 3.

<sup>9</sup> Observations de Maître Douzima-Lawson Marie-Edith relatives à la version confidentielle expurgée « Prosecution request for additional sitting hours to hear the testimony of Witness CAR-OTP-PPPP-0045 », 27 January 2012, ICC-01/05-01/08-2072-Conf, paragraph 3.

<sup>10</sup> Defence response to the Prosecution request for additional sitting hours to hear the testimony of Witness CAR-OTP-PPPP-0045, 27 January 2012, ICC-01/05-01/08-2076-Conf

<sup>11</sup> Registrar’s report in response to the “Prosecution request for additional sitting hours to hear the testimony of Witness CAR-OTP-PPPP-0045” (ICC-01/05-01/08-2068), 27 January 2012, ICC-01/05-01/08-2080-Conf.

<sup>12</sup> ICC-01/05-01/08-2080-Conf, paragraphs 4 to 6.

morning sessions of one hour thirty each and one session of two hours in the afternoon.<sup>13</sup>

## II. Analysis and Conclusions

### *Court sitting hours*

6. In accordance with Article 21(1) of the Statute, the Chamber has considered the following provisions: Articles 64(2), 64(6)(f), 64(7), 67(1) and 68(1) of the Statute and Regulations 23bis(3), 43 and 54(d) of the Regulations of the Court.
7. The Chamber notes that the court schedule has been disrupted since the beginning of the year due to difficulties in reaching Witness 45 in order for his testimony to start as scheduled. The Chamber also notes the defence's objection, especially to the First Proposal. The Chamber understands the Registry's concerns with regard to extra sitting hours and agrees that the prosecution's proposals, in particular the First Proposal, would place an additional burden on the Registry in terms of financial and human resources, notably on the detention centre and the security staff, the interpreters and stenographers.
8. In the present circumstances, in striking a balance between judicial economy and the Chamber's duty to ensure the expeditious and fair conduct of the trial proceedings, the Chamber is convinced that the Alternative Proposal for additional sitting hours as proposed by the Registry is the most appropriate. The Chamber will therefore sit from Monday 29 January to Wednesday 1 February from 9h30 till 16h30, on Thursday 2 February from 9h30 to 16h00, and will sit on Friday 3 February 2012 following the same schedule.

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<sup>13</sup> ICC-01/05-01/08-2080-Conf, paragraph 8.

### *Classification of filings*

9. At the outset, the Chamber reminds the prosecution that any request concerning amendments to the court schedule should, at a minimum, be notified to the defence and the participants concerned. In application of the principle of publicity of proceedings enshrined under Article 64(7) and 67(1) of the Statute, the Chamber is of the view that all underlying filings concerning the different proposals for court sitting hours are to be classified as public. For the sake of consistency and in accordance with Article 68(1) of the Statute, when necessary, the parties are to apply appropriate redactions to information pertaining to the travel arrangements of Witness 45, as proposed by the defence.<sup>14</sup> The filings of the legal representatives and the Registry do not contain any information which is confidential and they may be reclassified as public.

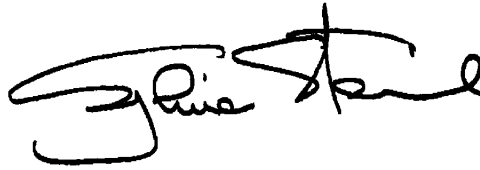
10. For these reasons, the Chamber:

- a. adopts the Registry's Alternative Proposal as specified in paragraph 8 above.
- b. orders the reclassification as public of documents:
  - i. ICC-01/05-01/08-2069-Conf,
  - ii. ICC-01/05-01/08-2072-Conf, and
  - iii. ICC-01/05-01/08-2080-Conf.
- c. orders the prosecution to file a public redacted version of its Request no later than 16:00 on 30 January 2012.
- d. orders the defence to file a public redacted version of its Response no later than 16:00 on 31 January 2012.

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<sup>14</sup> ICC-01/05-01/08-2076-Conf, paragraph 19.

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



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**Judge Sylvia Steiner**



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**Judge Joyce Aluoch**



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**Judge Kuniko Ozaki**

Dated this 27 January 2012

At The Hague, The Netherlands