

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: **ICC-01/05-01/08**
Date: **11 October 2010**

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

**Prosecution's Position on Potential Submission of Witness Statements at Trial pursuant
to Trial Chamber III's Order**

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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**Victims Participation and Reparations Other Participants
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1. On 4 October 2010, Trial Chamber III (“Chamber”) issued its “Order for Submission on the presentation of evidence at trial” (“Chamber’s Order”),¹ directing the Office of the Prosecutor (“Prosecution”) to provide its position on “the potential submission into evidence of the witness statements of those witnesses to be called to give evidence at trial”.²

2. The Prosecution submits that Article 69(2) of the Rome Statute (“Statute”) and Rule 68(b) of the Rules of Procedure and Evidence (“Rules”) permit the contemplated process. It also concurs that the contemplated process can promote expediency and efficiency³ by reducing the number of in-court hours that would otherwise be required to elicit potentially repetitive evidence in the Prosecution’s case-in-chief. Though this may not shorten the duration of cross-examination, and it could also require additional redirect examination, submission of witness statements nonetheless can help to streamline the trial process.

3. Notably, Trial Chamber II (“TC II”) has also endorsed the introduction of prior recorded statements.⁴ In allowing in principle the admission of witness statements, however, TC II admits statements only in part and will not admit portions that provide critical or contested evidence.⁵ The Prosecution submits that this limitation, though within the Chamber’s discretion, is not required by the Rules or the Statute. In the Prosecution’s view, the Chamber has the discretion to admit the entirety of that statement so long as the witness affirms under oath and in court the truth of the prior statement and is thereafter available for cross-examination about any matter contained therein. The Chamber, of course, is not bound to credit or rely on the entirety of the statement. And if the witness then testifies in a manner that is inconsistent with portions of that statement, the Chamber will decide which version is more credible or reliable, taking into account demeanor, the circumstances under which both testimony and previous statement were given, and any other relevant consideration.

4. If the Chamber agrees in principle to consider admission of a prior statement, the Prosecution will make Rule 68(b) applications for admission of particular witness statements -

¹ ICC-01/05-01/08-921, Order for submission on the presentation of evidence at trial, 4 October 2010.

² *Ibid*, at para. 2.

³ *Ibid*, at para. 1.

⁴ ICC-01/04-01/07-2362, Decision on Prosecutor's request to allow the introduction into evidence of the prior recorded testimony of P-166 and P-219, 3 September 2010.

⁵ *Ibid*, at para. 16.

whether in whole or in part - at appropriate stages in the trial.⁶ Its determination to seek the admission of a statement will take into account the progress of the proceedings and the evidence already introduced, a process that will continue throughout the Prosecution's case-in-chief. The Prosecution contemplates that any application for admission of a statement will highlight for the Chamber, the Defence, and the participants those paragraphs of the prior statement that it believes are repetitive of other evidence and also those portions that are particularly relevant.

6. For these reasons, the Prosecution submits that the Chamber has the authority under the Statute and the Rules to admit prior statements of witnesses who appear at trial and are available for cross-examination. The Prosecution further submits that the Chamber has the discretion to admit a prior statement in its entirety or to admit discrete portions thereof. If the Chamber agrees in principle to either approach, the Prosecution would submit the statement sufficiently in advance, identifying clearly the portions of the statement that it seeks to admit without further in-court direct examination, and the relevance of those portions to the issues before the Chamber.



Luis Moreno-Ocampo, Prosecutor

Dated this 11th Day of October 2010

At The Hague, The Netherlands

⁶ Trial Chamber II dealt with Rule 68(b) applications during trial: See ICC-01/04-01/07-2362, Decision on Prosecutor's request to allow the introduction into evidence of the prior recorded testimony of P-166 and P-219, 3 September 2010; See also ICC-01/04-01/07-2022, Requête de l'Accusation aux fins d'avancement de la déposition de P-219 et d'admission partielle de sa déclaration de synthèse comme élément de preuve, 14 April 2010.