

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 28 March 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**

Public

**Prosecution's Response to « *Requête de la Défense aux fins d'admission au titre
d'élément de preuve les déclarations d'un témoin faites lors de l'enquête de
l'Accusation* »**

Source: The Office of the Prosecutor

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

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1. During Witness CAR-OTP-PPPP-0087 (“Witness 87”)’s testimony on 14 January 2011 the Defence sought to introduce into evidence a statement of Witness 87’s uncle taken by the Office of the Prosecutor (“Prosecution”). Trial Chamber III (“Chamber”) ordered the Defence to submit in writing any request to introduce the uncle’s statement in evidence.¹ The Defence subsequently submitted its « *Requête de la Défense aux fins d’admission au titre d’élément de preuve les déclarations d’un témoin faites lors de l’enquête de l’Accusation* » (“Defence request”).²

2. The Defence seeks to introduce the statement into evidence to show a “contradiction” in Witness 87’s testimony. Witness 87 testified that she was present looking through the door behind the house when a member of the Banyamulenge shot and killed her cousin.³ She stated that she did not actually see the act of killing but saw her cousin enter the room followed by the Banyamulenge, heard gun shots, and found her cousin dead the next morning.⁴ In the uncle’s statement he states that he was not present when his son was killed and had received second-hand information about the killing shortly after the event from Witness 87.⁵ The uncle stated his son was kneeling when he was shot.⁶ The Defence asked Witness 87 if she had told her uncle that his son (her cousin) was forced to kneel before he was shot. She testified that she was in shock at the time and did not remember if she told him that.⁷

3. The Defence urges that the uncle’s out-of-court statement be admitted to prove that Witness 87 told her uncle that the victim was kneeling; according to the Defence,

¹ ICC-01/05-01/08-T-47-CONF-ENG CT2, 14 January 2011, p. 23, lines 8-11.

² ICC-01/05-01/08-1319, *Requête de la Défense aux fins d’admission au titre d’élément de preuve les déclarations d’un témoin faites lors de l’enquête de l’Accusation*, 8 March 2011.

³ ICC-01/05-01/08-T-45-CONF-ENG ET, 11 January 2011, p. 29, lines 7 to 24.

⁴ ICC-01/05-01/08-T-46-CONF-ENG ET, 13 January 2011, p. 51, lines 12 to 14, and ICC-01/05-01/08-T-45-CONF-ENG ET, 11 January 2011, p. 30, lines 14 to 20.

⁵ CAR-OTP-0052-0174 at 0182 and 0183.

⁶ CAR-OTP-0052-0174 at 0183.

⁷ ICC-01/05-01/08-T-47-CONF-ENG CT2, 14 January 2011, p. 18, lines 5-8.

this statement establishes that she necessarily exaggerated about something she did not actually see.

4. The Prosecution does not oppose the Defence request to introduce the statement of Witness 87's uncle into evidence. However the Prosecution does oppose the request that the Chamber consider the evidence only to establish the "contradiction" between Witness 87's testimony and the information the uncle provided more than six years later in his statement. It does not establish that Witness 87 presented different versions. It is possible, for example, that the information about the victim having knelt was an exaggeration or assumption by the witness's uncle himself. Based on the information at hand, it is unreasonable for the Defence to insist that the uncle's statement can be considered only to prove that Witness 87 provided contradictory versions.

5. Moreover, the uncle's statement is consistent with Witness 87's in-court testimony in other respects. The Defence request to restrict the Chamber's consideration of the statement to a hypothetical contradiction without allowing the Chamber to also consider the consistencies would limit its authority to fairly evaluate Witness 87's entire testimony under Article 69(4) of the Rome Statute. Thus the Chamber should be free to consider the totality of the uncle's statement and to give it appropriate evidentiary weight.



Luis Moreno-Ocampo, Prosecutor

Dated this 28th Day of March 2011

At The Hague, The Netherlands