



Original: **French**

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

Date: **8 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 Document

**Defence Application for the admission into evidence of a witness's statements
made during the Prosecution investigation**

Source: Defence team for Mr Jean-Pierre Bemba Gombo

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

The Office of the Prosecutor

Fatou Bensouda

Petra Kneur

Counsel for the Defence

Nkwebe Liriss

Aimé Kilolo Musamba

Legal Representatives of the Victims

Marie-Edith Douzima Lawson

Zarambeaud Assingambi

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar and Deputy Registrar

Silvana Arbia and Didier Preira

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Fiona Mckay

Other

I. INTRODUCTION

1. On 14 January 2011, the final day of its examination, the Defence read out to Witness 87 an excerpt of the statement ("the Statement") given to Office of the Prosecutor investigators by a relative. This relative ("the Relative") had initially been included on the list of Prosecution witnesses before subsequently being removed.¹

2. Trial Chamber III directed the Defence to clarify the relevance and purpose of quoting that excerpt to Witness 87. It further ordered the Defence to submit a written application, should it wish to tender the statement as evidence.²

3. Accordingly, as instructed by Trial Chamber III, the Defence hereby requests the statement to be admitted as evidence for the reasons outlined below.

II. APPLICATION

4. The Defence submits that all interviews with potential witnesses, irrespective of whether they are retained or discarded, constitute inadmissible "out-of-court" statements unless or until formally entered into the record of the case pursuant to a Court order. Thereafter, such statements may be used to incriminate or exonerate the Accused.

5. As a general rule, a party may request the admission of an "out-of-court" statement as evidence on two main grounds:

a) to establish the veracity of its content; and/or

b) to prove that the relevant words in the "out-of-court" statement were actually spoken.

¹ The interview of the Relative in question bears the ERN CAR-OTP-0036-0131_R01.

² ICC-01/05-01/08-T-47-CONF-ENG ET 14-01-2011 22/49 PV T at lines 8-11.

6. It should be recalled that Witness 0087 stated that she had “heard” but had not “seen” her brother’s murder. She further stated that as sole witness – although a “witness through mere hearsay” – to the events surrounding her brother’s death, she recounted all the details of that tragedy to the “Relative”.

7. In his statement, the “Relative” testified that the deceased brother had been forced to kneel down.³ The Defence submits that such information can only have come from Witness 0087 since, as stated above, Witness 0087 was the sole witness to the material events. Yet, Witness 0087 testified that she did not see her brother being shot.

8. There is therefore a serious contradiction between Witness 0087’s evidence and the “Relative’s” statement, which can only be dispelled by one of the following explanations: either the “Relative” was mistaken as to the account given to him by Witness 0087 or Witness had given the “Relative” an account of something that she could not have seen.

9. However, such a contradiction can only be demonstrated by admitting the statement as evidence for the specific purpose of proving that the “Relative” did actually utter the words which have been attributed to him, namely that he was told that the deceased was forced to kneel down before being shot.

10. The truth as to whether or not the deceased was forced to kneel down is irrelevant and the Defence is not seeking to use the statement to make inferences as to the manner of the deceased’s death.

11. Of note is that the Rome Statute does not provide for the exclusion of evidence on the ground that it was a statement given “out of Court” (hearsay). Moreover, article 69(4) of the Rome Statute specifically authorises the Trial Chamber to “rule on the relevance or admissibility of any evidence, taking into account, *inter alia*, the

³ CAR-OTP-0036-0139; the Relative used the French word “*agenouillé*” [knelt down].

probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence.”

12. Accordingly, the Defence respectfully submits that the introduction of the “Relative’s” statement is potentially probative of Witness 0087’s tendency to exaggerate in order to please her listeners and that the introduction of this evidence will in no way prejudice a fair evaluation of her evidence.

III. RELIEF SOUGHT

13. In light of all the foregoing, the Defence respectfully requests the learned Trial Chamber to admit the “Relative’s” statement into evidence for the sole purpose of showing a contradiction between Witness 0087’s evidence and the “Relative’s” version, which was based on information from Witness 0087. The Defence will explain the implications of such a contradiction for Witness 0087’s credibility in its final submissions.

[signed]

[signed]

Aimé Kilolo Musamba
Associate Counsel

Nkwebe Liriss
Lead Counsel

Dated this 8 March 2011

At The Hague, The Netherlands