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No.: **ICC-**

Date: **18/10/2010**

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,

**Defence Observations on the Potential Submission into Evidence of the Prior
Recorded Statements of Prosecution Witnesses Testifying at Trial**

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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**Victims Participation and Reparations
Section Other**

Factual Background

1. On 4 October 2010, Trial Chamber III issued its "Order for submissions on the presentation of evidence at trial" requesting the parties and participants to give their observations on the submission into evidence of the statements given by the witnesses the Prosecution intends to call at trial.¹

2. On 11 October 2010, the Prosecution filed its submissions² arguing that the Chamber has the authority under the Rome Statute and the Rules of Procedure and Evidence to admit prior statements of witnesses who appear at trial and are available for cross-examination. The Prosecution, accordingly, conveyed its agreement to the admission of such prior statements - either partially or entirely.

3. On 11 October 2010, the Legal Representative for victims represented by the Office of the Public Counsel for Victims also filed her submissions.³ The Legal Representative argued that the admission of prior recorded statements of witnesses to be called at trial will not render the proceedings more expeditious. Furthermore, the Legal Representative submitted that the prior recorded statements should only be admitted into evidence in exceptional circumstances where the Chamber considers it necessary for the determination of the truth.

Submission

4. The Defence for Mr. Jean-Pierre Bemba Gombo ("the Accused") concurs with the position presented by the learned Legal Representative in so far as she

¹ ICC-01/05-01/08-921.

² ICC-01/05-01/08-941.

³ ICC-01/05-01/08-943.

argues that the proposed procedure will not necessarily tend to save valuable court time.⁴

5. The Defence stresses its opinion that, as a general rule, testimony should be heard live and in court.⁵ Consequently, any exceptions to the general rule⁶ – especially when they are sought in order to render the judicial process more expeditious - should be construed extremely narrowly and never in a fashion which could prejudice the rights of the Accused.

6. By way of clarification, the Defence suggests that the envisaged procedure should not be adopted in those situations where the subject matter of the testimony in question is either materially in dispute or central to the core issues in the case. Given that very few issues are, at present, agreed between the Parties,⁷ the Defence is not in a position to make concessions which – while not necessarily rendering the proceedings more expeditious – could in fact prejudice the Accused.

7. The Defence suggests that the guiding principle should be the generally accepted rule that nothing is admitted into evidence when its prejudicial value could outweigh its probative effect.

8. The Defence refers to the reasoning of Trial Chamber I in the case against *Thomas Lubanga Dyilo* which stressed the "material advantages"⁸ to be gained from hearing *viva voce* testimony delivered in full before the Court - especially

⁴ ICC-01/05-01/08-943 at paras. 3 &4.

⁵ This opinion was expressed, *mutatis mutandis*, in a previous Defence submission entitled "*Réponse de la Défense à la Requête de l'Accusation aux fins de versement des témoignages préalablement enregistrés par CAR-OTP-WWWW-0032, CAR-OTP-WWWW-0080, and CAR-OTP-WWWW-0108*": ICC-01/05-01/08-829-Conf-Exp, 15 July 2010.

⁶ Such as those envisaged under Rule 68(a) and (b) of the Rules of Procedure and Evidence.

⁷ Nor is the Defence, indeed, obliged to agree to evidence sought to be adduced by the Prosecution.

⁸ ICC-01/04-01/06-1603.

when the evidence concerned requires comprehensive investigation and credibility issues demand observation of a witness's demeanour.

Conclusion

9. In light of all the aforementioned, the Defence respectfully submits that the admission of prior recorded statements of witnesses slated to testify will not expedite the proceedings at the present moment in time. As such, they should not be admitted into evidence in addition to *viva voce* testimony.



Aimé Kilolo Musamba
Conseil Associé

Done this 18th day of October 2010