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

Date: 8 July 2010

**THE APPEALS CHAMBER**

**Before:** Judge Anita Ušacka, Presiding Judge  
Judge Sang-Hyun Song  
Judge Akua Kuenyehia  
Judge Erkki Kourula  
Judge Daniel David Ntanda Nsereko

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC  
IN THE CASE OF  
THE PROSECUTOR  
v. JEAN-PIERRE BEMBA GOMBO**

**Public**

**Prosecution's response to Defence request for suspensive effect of the Defence  
appeal against the Decision on Admissibility and Abuse of Process**

**Source: Office of the Prosecutor**

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

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## **REGISTRY**

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Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## Introduction

1. On 24 June 2010, Trial Chamber III rejected the Defence application to dismiss the case as inadmissible or, alternatively, on account of alleged abuse of process.<sup>1</sup> The Defence of Jean-Pierre Bemba (“Appellant”) is appealing this decision.<sup>2</sup> On 5 July 2010 it filed a request for “suspensive effect” pursuant to Article 82(3) and Rule 156(5).<sup>3</sup> On 7 July 2010, the Chamber decided to postpone the commencement of the trial “at least until the application for suspension has been resolved” and has fixed a status conference for 30 August 2010 to hear submission on re-fixing a trial date.<sup>4</sup>
  
2. The Appellant’s Request goes beyond a proper request for suspensive effect of the Appealed Decision, and effectively asks the Appeals Chamber to order that the trial before Trial Chamber III be stayed.<sup>5</sup> Such a request goes beyond the scope of suspensive effect under Article 82(3), which covers whether the *decision* under appeal can be implemented or remain in effect while the appeal is pending. There is thus no legal basis for granting the relief requested by the Appellant. Nor has the Appellant made a sufficient showing of harm to justify suspension of the trial.

## Submissions

*No showing justifying suspensive effect has been made*

3. For suspensive effect to be attached to an appeal, the Appellant must satisfy the Appeals Chamber that the impugned decision would create an

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<sup>1</sup> ICC-01/05/01/08-802 (“Appealed Decision”).

<sup>2</sup> ICC-01/05-01/08-804-Corr2-tENG OA3.

<sup>3</sup> ICC-01/05-01/08-809 OA3 (“Appellant’s Request”).

<sup>4</sup> ICC-01/05-01/08-811, paras. 5-6.

<sup>5</sup> Appellant’s Request, para. 8.

“irreversible situation that could not be corrected even if the Appeals Chamber eventually were to find in favour of the appellant”.<sup>6</sup>

4. The Application fails to demonstrate the existence of any risk of irreparable prejudice which would flow from the impugned decision remaining in effect pending the resolution of this appeal. Rather, the Appellant merely recites findings from the Trial Chamber noting the convenience of having the issue of admissibility decided before trial commenced. However, the fact that the Trial Chamber may have considered undesirable to start a trial *before* it resolved admissibility does not further mean that it thought it undesirable to start the trial *after* it resolved the issue, but before the appeal is decided. Indeed, the Trial Chamber has delayed the trial until the Appeals Chamber rules on the Defence application to suspend proceedings and not until the appeal is resolved.<sup>7</sup> It has also scheduled a status conference to discuss the trial date.<sup>8</sup> This suggests that the Chamber does not agree with the Defence position.
5. In addition to the Appellant’s failure to make a showing of irreparable prejudice, there is no other arguable basis in this case justifying an order for suspensive effect. First, there is nothing in the Court’s basic documents or jurisprudence to suggest that as a matter of law a trial may not start unless there is a final decision on admissibility. Thus, the fact that a Trial Chamber’s determination on admissibility is under appeal does not constitute a legal obstacle for the trial to start.
6. Second, the assumption under the Statute and the Rules is that first-instance decisions remain in force unless a particular showing is made warranting suspension. There is a decision that the case is admissible and that the rights of the accused were not infringed. The trial can move forward on that basis. In

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<sup>6</sup> ICC-01/04-01/06 OA 11, 22 April 2008, para. 8.

<sup>7</sup> ICC-01/05-01/08-811, para. 5.

<sup>8</sup> Ibid.

his request, the Appellant has not identified any prejudice which would flow from that course of action. The fact that the Trial Chamber considered that it was preferable to have a determination on the admissibility of the case before the commencement of trial cannot in itself constitute grounds for granting suspensive effect.<sup>9</sup> Indeed, if suspension was granted based on the arguments of the Appellant in this case, the result would be that an appeal against any decision which a Trial Chamber considered desirable to have determined prior to trial would automatically lead to suspensive effect.

*Even if ordered, suspensive effect would not halt trial proceedings*

7. Even if the Appeals Chamber considered that the facts of the case justify an order attaching suspensive effect to the decision under appeal, the Prosecution submits that the Chamber could not grant the relief requested by the Appellant (a stay of proceedings before the Trial Chamber and thus postponement of the trial). Suspensive effect, properly understood, means that the decision under appeal is suspended and will not be implemented pending appellate resolution. It does not extend to the suspension of other decisions or proceedings before the first instance Chamber, unless this is an unavoidable consequence of suspending the implementation of the decision under appeal.<sup>10</sup>
8. In this instance, a stay of all proceedings and postponement of the trial as requested by the Defence is not the necessary and unavoidable consequence of suspending the decision on admissibility pending appeal. Since as a matter of law a trial may start without a final ruling on admissibility, a grant of suspensive effect from the Appeals Chamber would thus only mean that the Trial Chamber must consider the issue of admissibility to remain

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<sup>9</sup> The Prosecution notes that the Chamber reiterates this position in its recent decision postponing the commencement of trial. See ICC-01/05-01/08-811, para. 5.

<sup>10</sup> For example, in an appeal against release, an order for suspensive effect freezes any judicial actions by the first instance Chamber aimed at releasing the person.

undetermined. It would be then for the Trial Chamber to decide whether, as it considered earlier, it would be undesirable to commence the trial in these circumstances, or whether there are other interests and considerations which justify moving forward with the proceedings, such as the legitimate expectation of victims that the trial will proceed swiftly. This determination belongs solely to the Trial Chamber: the Appeals Chamber has already determined that it does not have the authority to order a stay of any proceedings before other Chambers of the Court.<sup>11</sup>

### **Relief Sought**

9. For the above referred reasons, the Prosecution requests that the Appeals Chamber to reject the Appellant's request for suspensive effect.



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**Luis Moreno-Ocampo,**  
**Prosecutor**

Dated this 8<sup>th</sup> day of July 2010

At The Hague, The Netherlands

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<sup>11</sup> ICC-02/04-01/05-408 OA3, 16 September 2009, paras. 88-91; ICC-01/04-01/06-844 OA8, 9 March 2007, paras. 3, 4.